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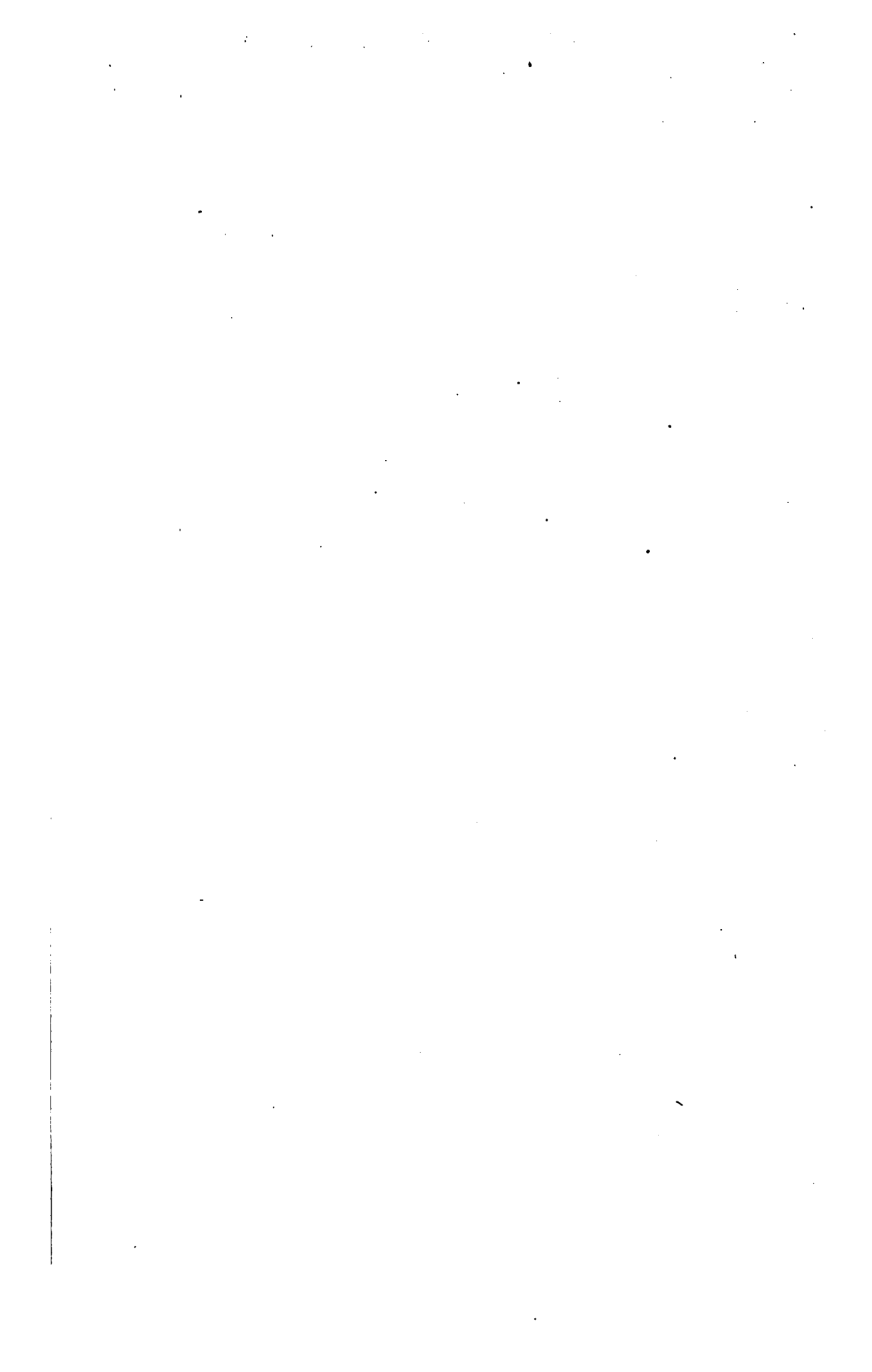
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A  
**SYSTEM OF CONVEYANCING**

COMPILED BY

**THE JURIDICAL SOCIETY OF EDINBURGH**

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**Volume First**



*Printed by LORIMER AND CHALMERS, Edinburgh*

FOR

**WILLIAM GREEN AND SONS**

*July, 1907*

A  
COMPLETE  
SYSTEM OF CONVEYANCING

ADAPTED TO THE  
PRESENT PRACTICE OF SCOTLAND  
AND THE RECENT STATUTES ..

COMPREHENDING THE  
CONSTITUTION, TRANSMISSION, AND EXTINCTION  
OF HERITABLE AND MOVEABLE RIGHTS

BY THE  
*Juridical Society of Edinburgh*

IN TWO VOLUMES

VOL. I.

*SIXTH EDITION*

EDINBURGH  
WILLIAM GREEN & SONS

1907



TO THE SOCIETY OF  
WRITERS TO HIS MAJESTY'S SIGNET

The following Work

IS AGAIN RESPECTFULLY DEDICATED

AS A TESTIMONY OF RESPECT AND GRATITUDE

BY

THEIR MOST OBEDIENT SERVANTS

The Juridical Society

1907

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## PREFACE TO SIXTH EDITION

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THE Fifth Edition of the First Volume of the Juridical Society's Styles, containing Forms of Writs relating to Heritable Rights, was published in 1881. The Fifth Edition of the Second Volume, containing Forms of Writs relating to Moveable Rights, was published in 1883. Reprints of these volumes were issued in 1896.

The length of time which has elapsed since the preparation of the Fifth Edition and the passing of important Statutes affecting the Law in many of its branches, have made a thorough revision of the work necessary; and this has been attempted in the present Edition.

The course followed in previous Editions of dividing the work into volumes dealing with Writs relating to Heritable Rights and to Moveable Rights respectively, has in this Edition been departed from, and the work has been made continuous. The former practice resulted in considerable repetition and overlapping in certain Titles, without, it is thought, sufficient compensating advantage, and the form adopted in this Edition seems more satisfactory, and saves space.

The lengthy introductory matter to each of the Titles in the former Editions has been greatly curtailed, and in many cases entirely omitted. Such matter seems more appropriate to the Text-Books, and is more satisfactorily dealt with in them than it was or could be in a work of this nature.

Several of the Titles, and particularly those relating to Partner-

ship, Companies, and Submissions are entirely rewritten and greatly enlarged; in the others, forms now actually in use have been substituted for those which have become obsolete; and several of the Titles have been rearranged in what seems a more convenient manner.

It is hoped that the alterations made or attempted in this Edition will be found to have increased the usefulness of the work.

The Society gratefully acknowledges the kind assistance of those gentlemen who have taken an active part in the preparation of these volumes.

EDINBURGH, *June*, 1907.

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# SYSTEM OF CONVEYANCING

## TITLE I

### FEU-CHARTERS AND OTHER ORIGINAL GRANTS FROM SUPERIORS

#### SECTION I

#### THE FEU-CHARTER

##### 1. Feu-Charter in Ordinary Form.

I, A, heritable proprietor of the subjects hereinafter disposed, IN Narrative clause. CONSIDERATION of the feu-duty and other prestations after specified *(if any other consideration, onerous or gratuitous, exists, here state it)*, DO hereby SELL and in feu-farm DISPONE to and in favour of B, and Dispositive clause. his heirs and assignees whomsoever, heritably and irredeemably (a), ALL AND WHOLE *(here describe the subjects)* (b)—But always with Reservations. and under the reservations, real burdens, conditions, provisions, restrictions, and qualifications *(or such of these as may be applicable)* following, viz. *(here insert them)*, All which reservations, burdens, conditions, &c. *(as the case may be)*, are hereby declared real and preferable burdens upon and affecting the said subjects hereby disposed, and are appointed to be inserted in any Notarial Instrument to follow hereon, and to be inserted or validly referred to in all future deeds of transmission, decrees, instruments, or other writs, of or relating to the said subjects or any part thereof, otherwise such deeds, decrees, instruments, and writs shall be void and null: WITH Date of entry.

(a) If it be desired to exclude assignees before infeftment, &c., a suitable clause will be found in the immediately succeeding form.

(b) When it is the understanding of parties that any separate subject or an accessory right—such as a right of fishings, teinds, commonry, common pasturage, right of way, or the like—is to be conveyed, it ought to be clearly expressed in the charter. *Regalia*, such as salmon-fishings—as also teinds when once feudalised—and mills which have been feudally set apart from the lands by separate infeftment, ought in all cases to be expressly conveyed.

Tenendas. ENTRY at : TO BE HOLDEN, the said subjects, of and under  
me and my heirs and successors as immediate lawful superiors  
Reddendo. thereof in feu-farm, fee, and heritage for ever; FOR PAYMENT to me  
and my foresaids by the said B and his foresaids, of the sum of  
£           sterling yearly, in name of feu-duty, at two terms in the  
year, Whitsunday and Martinmas, by equal portions, beginning the  
first term's payment thereof at           for the half-year preced-  
ing, and the next term's payment thereof at           following,  
and so forth at the said two terms in the year in all time thereafter,  
with a fifth part more of each term's payment of liquidate penalty  
in case of failure in the punctual payment thereof, and interest at  
the rate of five per centum per annum of the said feu-duty from the  
respective terms of payment during the non-payment of the same,  
and paying the further or additional sum of £           sterling at  
the term of           in the year 19   , and at the same term in  
every           year thereafter, and that over and above the feu-duty  
of the year, with penalty and interest as provided in the case of the  
Assignment of writs. feu-duty: AND I assign the writs, but to the effect only of main-  
taining and defending the right of the said B and his foresaids in  
the subjects hereby disposed; and for that purpose I oblige myself  
and my foresaids to make the same, to the extent of a legal progress,  
furthcoming to the said B and his foresaids, at their expense, on all  
necessary occasions, and that on a receipt and obligation to re-deliver  
the same within a reasonable time and under a suitable penalty:  
Assignment of rents. AND I assign the rents: AND I bind myself and my foresaids to  
Obligation to relieve of public burdens, &c. free and relieve the said B and his foresaids of all feu-duties and  
casualties, or sums of money in lieu thereof, payable to my superiors  
now and in all time coming, and of all public and parochial burdens  
exigible prior to said term of entry: AND I grant warrandice [*add  
if the charter is granted gratuitously*—from fact and deed only]:  
Clause of registration. AND I consent to registration hereof for preservation. IN WITNESS  
Testing clause. WHEREOF, &c. (see page 28).

### Variations of Narrative Clause, &c.

When the deed is to be granted by a wife with consent of her husband, by tutors, factors, commissioners, or trustees, by a minor with consent of his curators, by an inhibited person with consent of the inhibiting creditor, or by any other person not the sole, free, and absolute owner of the property intended to be conveyed, the precise *character* in which the granter and any consenter execute the deed must

be distinctly marked, and any deeds or authorities under which they act specifically set forth. [Examples of this kind will be given in the next Title, when treating of dispositions to purchasers. These will be found equally applicable to feudal grants.]

A case that requires to be specially mentioned here, is that of a proprietor feuing his lands with consent of a heritable creditor who has agreed to renounce and discharge his security over the *dominium utile* while retaining it over the *dominium directum*. Where there are several heritable creditors, the usual, and perhaps in every case the preferable, course is for them to grant a separate deed discharging the *dominium utile* of their securities. If, however, this course is not adopted, the following clause will be inserted before the words of conveyance :—

With the special advice and consent of C, for all right and interest competent to him in or to the *dominium utile* or property of the subjects hereby disposed, in virtue of a Bond and Disposition in Security granted by me, the said A, in favour of the said C, for the sum of £                      sterling, dated the                      day of                      , and recorded in the (*specify Register of Sasines and date of recording*). Clause discharging security over *dominium utile*.

The assignations of the writs and of the rents should bear to be with consent of the creditor, and the following declarations should be inserted prior to the clause setting forth the term of entry :—

DECLARING, as it is hereby specially provided and declared, that the *dominium utile* or property of the said subjects is hereby redeemed and disburdened of the security constituted by the said Bond and Disposition in Security, which is by these presents restricted to the *dominium directum* or superiority belonging to me the said A, but that the said C reserves entire and unaffected his rights in virtue of the said Bond and Disposition in Security over the *dominium directum* or superiority of the said subjects, feu-duties, and other prestations before mentioned, and all other rights and claims incident to the said *dominium directum* or superiority. Declaration that security over superiority reserved.

If there has been any *rei interventus* on the part of the intending vassal between the agreement for the feu and the granting of a charter (such as building on the subject), and if he thereafter sells the feu to a third party, the charter to the purchaser will proceed on some such narrative as the following :—

I, A, heritable proprietor of the subjects hereinafter disposed, Where feu sold to a third party before charter is granted.  
CONSIDERING that it was agreed between me and B that I should feu to the said B the said subjects, and that accordingly at the term of                      he entered into possession of the same, and built a dwelling-house and others thereon, but that he has not yet

obtained any title thereto; AND that the said B has since sold the said subjects to C at the price of £           sterling, AND has requested me to grant the feu-right thereof to the said C, who has now made payment of the foresaid price to the said B, of which by subscription hereof he acknowledges the receipt: THEREFORE I the said A, in consideration of the feu-duty and other prestations hereinafter specified, with the special advice and consent of the said B, and I the said B, for all my right and interest in the premises, DO hereby SELL, and in feu-farm DISPONE, &c.

## 2. Feu-Charter *where Buildings already exist on the Ground Feued.*

Narrative  
clause.

Dispositive  
clause.

Exclusion  
of assignees  
before in-  
feftment.

Reservation  
of minerals.

Mineral  
damage.

I, A, heritable proprietor of the subjects and others hereinafter disposed, IN CONSIDERATION of [the sum of £           sterling instantly paid to me by B, of which I hereby acknowledge the receipt, and of] the feu-duty and other prestations after written, do hereby sell and in feu-farm DISPONE to and in favour of the said B, and his heirs and assignees whomsoever, but exclusive always of assignees before infeftment on or registration of these presents in the appropriate Register of Sasines, and under the declaration that the same shall not be a valid warrant for such infeftment, nor shall be so registered after the expiry of three months from the date hereof, heritably and irredeemably, and with and under the burdens, reservations, conditions, restrictions, obligations, provisions, and declarations after specified, ALL AND WHOLE (*here describe the subjects accurately*). But always with and under the burdens, reservations, conditions, restrictions, obligations, provisions, and declarations following, viz.:—RESERVING always to me and my heirs and successors in the lands, of which the piece of ground hereby disposed is part, the whole coal, shale, limestone, marl, ironstone, clay, freestone, slate, marble, and other stone, sand, and all other mines, metals, minerals, and fossils, though not hereinbefore specially enumerated, within or under the piece of ground hereby disposed, with full power and liberty to me and my foresaids, or any person authorised by us, to search for, work, win, raise, calcine, and carry away the same, and to do everything necessary for all or any of these purposes, I and my foresaids paying to the said B and his foresaids, all damages which the surface only of the piece of ground hereby disposed, or the buildings erected or

to be erected thereon may sustain in and through the operations necessary for the exercise of the said reserved right and power, as said damages shall be ascertained by two arbiters, one to be chosen by me or my foresaids, and the other by the said B or his foresaids, or, in case of difference in opinion between the said arbiters, by any oversman whom they shall choose, and whom they shall in all cases nominate before they enter on the business of the submission:

RESERVING ALSO to me and my foresaids the sole and exclusive right to the whole burns and streams of water flowing through or upon the lands adjacent to the piece of ground hereby disposed, with right to apply the same for our own exclusive use as we shall think proper:

Reservation  
of streams.

AND PROVIDING AND DECLARING that the said B and his foresaids shall be bound to uphold and maintain the existing buildings, and, when necessary, to renew the same, or rebuild upon the piece of ground hereby disposed such buildings as may have been previously agreed upon between the said B or his foresaids and me or my foresaids, and that only upon a site or sites, and according to plans, elevations, and specifications previously submitted to and approved of by me or my foresaids, and no external alterations of any kind shall ever be made upon the said buildings, and no other buildings shall at any time be erected on the piece of ground hereby disposed without the consent, in writing, of me or my foresaids having been first had and obtained:

Obligation  
to maintain  
existing  
buildings,  
&c.

AND FURTHER PROVIDING AND DECLARING that the piece of ground hereby disposed, in so far as not built upon, shall be laid out as garden ground, or as courtyards, cleanly kept, and be kept and used for these purposes only: And the said B and his foresaids shall be bound to enclose the piece of ground hereby disposed, in so far as not already done, and to keep the same enclosed with fences to the satisfaction of me or my foresaids: PROVIDING ALWAYS that the said B and his foresaids shall have no claim against me or my foresaids for any part of the value of mutual gables or division walls, or fences, or in respect of the maintenance thereof, whether the adjoining lots are feued or not, and no buildings of any description shall be erected on mutual walls or fences without consent of the persons interested therein as well as of me or my foresaids: AND IT IS SPECIALLY PROVIDED AND DECLARED that I and my foresaids shall not be held as guaranteeing an outlet for the drainage of the piece of ground hereby disposed, and the said B and his foresaids shall not, under any circumstances, connect their drains with any burns or streams

Garden  
ground.

Obligation  
to enclose  
feud.

Mutual  
walls.

Drainage.

Prohibition  
against  
selling  
liquor,  
erecting  
manufac-  
tories, &c.

Feu to be  
treated as a  
whole, on  
sale, &c.

Irritancy  
clause.

Conditions,  
&c., made  
real  
burdens.

flowing through or by the piece of ground hereby disposed: And in the event of any drains or roads being made for the piece of ground hereby disposed, under the authority of the Police Acts or other Acts of Parliament, the said B and his foresaids shall be bound to pay for the expense of such, as assessed under said Acts: And the said B and his foresaids are hereby expressly prohibited from selling or keeping for sale spirits, wines, or malt liquors upon the piece of ground hereby disposed upon any pretence whatever, and from erecting or maintaining upon the said piece of ground any steam-engine, or working or carrying on thereon any distillery, manufactory of soot or blood, brewery, candle-work, soapwork, tanwork, or kilns, and that whether they constitute a nuisance or not, nor shall they be entitled to erect or carry on any nauseous or noisy manufacture which can be considered a nuisance by the public or neighbourhood as, in case of complaint, I or my foresaids may determine: DECLARING ALSO that in case the said B or his foresaids shall sub-feu, sell, or dispose the said subjects, they shall only have power to do so as a whole, and without subdivision, and all sub-feus, sales, or dispositions of a part or parts only of the subjects shall be null and void: AND IT IS HEREBY EXPRESSLY PROVIDED AND DECLARED that if the said B or his foresaids shall contravene or fail to implement any of the conditions, provisions, and obligations herein written, this present right, and all that may have followed thereon, shall, in the option of me and my foresaids, become void and null, without declarator or other process of law to that effect, any law or practice to the contrary notwithstanding, and that the said B and his foresaids shall amit, lose, and forfeit all right and interest in the piece of ground hereby disposed and buildings thereon, which shall thereupon revert and belong to me and my foresaids, free and disencumbered of all burdens whatsoever, in like manner as if this feu-right had never been granted, and we shall have right to remove the said B and his foresaids from, and to enter into possession and levy the rents of the said subjects in all time thereafter: All which burdens, conditions, provisions, restrictions, reservations, and clauses irritant before written are hereby declared to be real burdens affecting the said piece of ground and are appointed to be inserted in any Notarial Instrument which may follow hereon, and to be inserted or validly referred to in terms of law in all future deeds of transmission, writs, decrees, and instruments of, or relating to, the said piece of ground, otherwise such deeds, writs, decrees, and

instruments shall be void and null : WITH ENTRY (*proceed as in Form 1 to end, but immediately before the testing clause insert*—and in consideration of my having agreed to grant these presents, the said B. by acceptance hereof, for himself and his foresaids renounces and departs from all or any other rights of possession he or they may have to the subjects, except under these presents).

Acceptance  
by vassal.

### 3. Another Form of Feu-Charter, *providing for the Erection of New Buildings.*

I, A (*proceed as in Form 2 down to end of description of subjects*). But always with and under the following reservations, burdens, conditions, provisions, and declarations, and clauses irritant and resolute, viz:—(*First*) The said B and his foresaids shall within from the term of entry after mentioned, erect, and thereafter constantly uphold and maintain in all time coming, on the said piece of ground, buildings of the value of £ at least [*or capable of yielding a rent equal to at least double [*or treble, &c.*] the amount of feu-duty hereafter specified*], which buildings shall consist of [*here carefully describe the kind of buildings to be erected*]. The said buildings shall be erected according to plans and elevations to be submitted to and approved of by me or my successors previous to the commencement of building operations, and the external appearance of the said buildings shall not at any time be altered without the consent, in writing, of me or my foresaids. The buildings shall be constructed of strong and substantial masonry, and the quality and description of the stone and the style of dressing shall be subject to the approval of D, architect, Edinburgh. No buildings or erections of any kind whatever, other than the said , and renewals thereof, and the walls and other enclosures as after mentioned, shall ever be erected on the said piece of ground. (*Second*) The said B and his foresaids are hereby restricted from carrying on any nauseous chemical operations, noxious or noisy manufactures, or making any use of the subjects which may be deemed a nuisance, or may occasion disturbance to any of the neighbouring feuars or proprietors or their tenants, of which nuisance the superior shall be sole judge. (*Third*) Previous to the commencement of building operations, the said B and his foresaids shall enclose the said piece of ground with a temporary fence to

Narrative  
clause, &c.  
Conditions  
of feu.

Maintain  
buildings  
of certain  
value.

Plans and  
elevations to  
be approved  
of.

Prohibition  
of manufac-  
tures.

Enclosure  
of feu.

Mutual  
boundaries  
and gables.

Quarrying.

Roadways  
and pave-  
ments.

the satisfaction of the said D, and, so far as not already done, the said B and his foresaids shall, within from the term of entry after mentioned, except where the said piece of ground may be enclosed by the gables of the foresaid buildings, permanently enclose the said piece of ground with suitable fences or walls of such height, thickness and description as may be specified by the said D: Declaring that the gables, boundary walls or fences to be erected on the side or sides of the said piece of ground adjoining to other unfeued ground belonging to me shall be built by and at the expense of the said B and his foresaids, one-half on the piece of ground hereby disposed and the other half on the adjoining ground, and the said B and his foresaids shall be entitled to recover from the feuars of the adjoining ground, if and when the same is feued, one-half of the expense of erecting the said gables, boundary walls or fences, declaring, on the other hand, that in the event of the said gables and boundary walls having been erected by the adjoining feuars, the said B and his foresaids, shall be bound when required, to pay to such adjoining feuars or their assignees one-half of the value of the same, as such value may be ascertained by an ordained Surveyor to be appointed by me or my foresaids, and to free and relieve me and my foresaids of all claims in connection therewith, which gables, boundary walls or fences shall thereafter be mutual, and shall be maintained by the said B and his foresaids, and the adjoining feuars and their successors in all time coming: Declaring further that the said B and his foresaids shall under no circumstances have any claim against me or my foresaids, as superiors, for any part of the cost of the erection of the said gables, boundary walls, or fences, or any of them, or otherwise in connection therewith, and that where the adjoining ground is unfeued, and until it is feued, the said gables and boundary walls or fences shall be maintained at the sole expense of the said B and his foresaids. (*Fourth*) The said B and his foresaids shall not be entitled to quarry or excavate stone, sand, or any other material on the said area of ground, except for the purpose of building thereon. (*Fifth*) Whereas I have formed the roadway opposite to the said piece of ground, and have put down surface water-channels therein, the said B and his foresaids shall be bound to maintain the same, and if and when the Municipal Authorities require the same to be done, the said B and his foresaids shall be liable to causeway, or otherwise make up, form, and complete the

roadway, so far as opposite to the said piece of ground, to the extent of one-half thereof, and the said B and his foresaids shall also be bound to lay and maintain, until taken over by the Municipal Authorities, the foot-pavements in front of the said piece of ground, which foot-pavements shall be of such width, and shall be constructed of such material, as the Municipal Authorities may approve of: And whereas I have formed a main drain which serves the said piece of Drains. ground, the said B and his foresaids shall be bound at his or their own expense to connect the drainage system of the foresaid buildings therewith to the satisfaction of the Burgh Engineer, and to maintain the said connection in all time coming. (*Sixth*) The said B and his Buildings to be insured. foresaids shall be bound to keep the said buildings to be erected on the said area of ground constantly insured against loss by fire with an established insurance company for the full value thereof, and to produce to me and my foresaids from time to time when required the policies of insurance and the termly receipts for payment of the premiums: And in the event of the said buildings being destroyed or damaged by fire, the said B and his foresaids shall be bound to restore them to the stipulated value, as aforesaid, within one year after such destruction or damage, and the whole sum to be received from the insurance company shall be expended at the sight of me or my foresaids in re-erecting the said buildings or repairing the damage done by such fire, and the buildings shall be re-erected or restored so as to be in all respects consistent with the conditions of this Charter. (*Seventh*) The said B and his foresaids shall be bound to Obligation to produce charter to superior. make this Charter and the whole Title-Deeds of the said piece of ground furthcoming to me and my foresaids for a reasonable time on all necessary occasions when required, and that free of expense to me or my foresaids. (*Eighth*) I and my foresaids shall be entitled to make Deviation by Superior from feuing-plan. or allow at pleasure such alterations or deviations as I or they may think fit upon any feuing-plans of the remainder of my property, of which the said piece of ground forms part, or roads or drains thereof, or even to depart entirely therefrom: And in the event of my or their doing so, the said B and his foresaids shall have no right or title to object thereto, and shall have no claim in respect thereof: Declaring, and it is by acceptance agreed, that if the said B and his foresaids shall contravene or fail to implement any of the burdens, conditions, Irritant and resolutive clause. declarations and others herein written, this present Feu-right and all that may have followed thereon shall, in the option of me and my

foresaid, become void and null, without declarator or other process of law to that effect, any law or practice to the contrary notwithstanding; and the said B and his foresaid shall forfeit all right and title in and to the said area of ground and buildings thereon, which shall, in that event, revert to me and my foresaid in like manner as if these presents had never been granted, and, in addition, the said B and his foresaid shall remain liable to me and my foresaid for payment of the bygone feu-duties and performance of the prestations incumbent on them under these presents prior to the date of such forfeiture: All which burdens, conditions, declarations, and others, and the foregoing irritant and resolute clause are hereby created real and preferable burdens affecting the said area of ground and the said buildings to be erected thereon and are appointed to be set forth at full length in any notarial or other instrument to follow hereon, and to be set forth at full length or validly referred to in terms of law in all feu-rights, transmissions, and investitures thereof, otherwise the same shall be void and null: With entry [*proceed as in Form 1 to the end*].

#### 4. Feu-Charter by a Factor and Commissioner of an Area for Erection of Tenement.

Designa-  
tion, &c., of  
commissioner.

I, A, W.S., Edinburgh, as Commissioner for X, heritable proprietor of the lands and estate of Z, in the parish of \_\_\_\_\_ and county of \_\_\_\_\_, of which the subjects hereinafter disposed form part, conform to Commission dated the \_\_\_\_\_, and recorded in the Books of Council and Session \_\_\_\_\_, granted by the said X in my favour, whereby full power, warrant and commission are given to me for the said X, and in his name, to feu or dispo under ground-annual such parts of his said lands and estate, by public roup or private bargain, as I may think proper, and that for payment or performance of such prices, feu-duties, ground-annuals, casualties, or services as may be agreed on, and full power, warrant, and commission are thereby given to me for him and in his name to grant and deliver to the feuars or disponees valid original feu-contracts, charters, or dispositions of the subjects so to be feued or disposed, with all usual and necessary clauses, and

specially a clause binding him in absolute warrandice: THEREFORE, in exercise of the powers thereby committed to me, and in consideration of the feu-duty and other prestations after mentioned, and with and under the reservations, conditions, restrictions, obligations, provisions and declarations after specified, I, as Commissioner foresaid, do hereby SELL and in feu-farm DISPONE from the said X, Dispositive clause. his heirs and successors whomsoever, to and in favour of B and his heirs and assignees whomsoever (*or such other destination as is desired*) (the said B and his foresaids being hereinafter called "my said disponees"), but excluding assignees before infeftment hereon or Exclusion of assignees before infeftment. registration hereof in the Register of Sasines: And DECLARING that it shall not be competent after the expiry of six months from the date hereof to expedite infeftment hereon, or to register these presents in the said Register of Sasines, to the effect of completing a valid feudal title under the same, heritably and irredeemably, ALL AND WHOLE (*describe subjects specifically. It is usual also to annex a plan showing the subjects to be No. of the General Feuing Plan of the Estate*): Description. DECLARING always, as it is hereby expressly provided and declared, Conditions of feu. that these presents are granted with and under the reservations, conditions, restrictions, obligations, provisions and declarations after specified, viz.:—(*First*) That my said disponees shall be bound and obliged, within year(s) from the date of these presents, to erect, and thereafter to uphold and maintain, on said area of ground hereinbefore disposed, coloured on said plan, a tenement of dwelling-houses four stories in height above the level of the street, of the value of at least , and which tenement shall be built on the line laid down on the said plan and according to elevation plans, and of materials, and with suitable boundary walls, or walls and railings, all to be approved of by the said X; and it shall not be in the power of my said disponees to make any deviation from or alteration upon the said plans and elevations, nor to make any projection or building whatever beyond the line of the front and back walls of the said tenement, except with consent of my said constituent: DECLARING that no buildings shall be erected on the back-ground tinted on the said plan, and the same shall be used only as a green for bleaching or drying clothes in all time Backgreens. coming for the said tenement, and said tenement shall be in the same style as the tenements in , and shall not be finished in a manner inferior thereto, and there

shall not be more than                      separate dwelling-houses on each landing or flat: AND my said disponees shall be bound and obliged to keep the buildings to be erected on said area or piece of ground  
 Insurance. constantly insured against loss by fire with an established Insurance Company, for at least the sum of

; and in the event of the said tenement, or any part of it, being destroyed or damaged by fire, my said disponees shall be bound to restore it to the requisite value within two years of such destruction or damage, and the whole sum to be received from the said Insurance Company shall be expended at the sight of the superior in rebuilding the said tenement, or repairing the damage done by such fire; and such tenement shall not be re-erected in a style or in a line different from that originally agreed on, without the consent of the superior first had and obtained; and the said X and his foreshaids shall be at all times entitled to require exhibition of the policies of insurance effected on said tenement, and of the termly receipts for payment of the premiums due under said policies: DECLARING that in the event of my said disponees selling and disposing the dwelling-houses in said tenement in main-doors, flats, or half-flats, it shall be in their power to allocate and apportion on each of said dwelling-houses so sold and disposed a proportionate share of said insurance. (*Second*) That my said disponees shall be entitled to erect and build the gables and boundary walls and railings of the subjects hereby feued, to the extent of one-half of the breadth or thickness thereof, upon the adjoining ground on each side, except that fronting a road or street, on which side the boundary wall and railing shall be formed wholly on the area or piece of ground hereby disposed: And on my said disponees receiving payment from the proprietors of the adjoining feus of one-half of the value of such gables and boundary walls and railings, as the same shall be fixed by  
 Erection of gables and boundary walls.

, whom failing  
 , such gables and boundary walls shall thenceforth be mutual to the adjoining proprietors, and be maintained at joint expense in all time to come; but my said disponees shall have no claim against the said X or his successors for any portion of the expense of said mutual gables and boundary walls and railings: AND FURTHER, my said disponees shall be entitled to use any gable or boundary wall or railing of the adjoining feus which may have been erected to the extent of one-half of the thickness thereof on the piece of

ground hereby feued, and shall be bound, as soon as said gable or wall or railing has been used by them, to pay to the adjoining feuar or feuars one half of the value of such gable or boundary wall or railing, as the same shall be fixed by the said Payment therefor

, whom failing, the said ; and such gable, boundary wall or railing shall thereafter be mutual property, and be maintained at the mutual expense of my said disponees and the adjoining proprietors. (*Third*) That should my said disponees sell the subjects in main-door houses, flats, or half-flats, which it is hereby declared they shall have right to do, the proprietors of each part so sold shall have right of access to the roof of the tenement of which the part so sold forms part, by the common stair therein, and hatchway at the top of the same, for the purpose of sweeping the vents and executing necessary repairs: And in the event of said tenement being sold in parts as aforesaid, the whole proprietors of the tenement shall be bound to uphold and keep in repair the roof, chimney-heads, and hatchway of said tenement for access thereto, and the rain-water pipes thereof, and the cesspools or cross-drains or communications with the common sewers, and the foot-pavement in front, and all others common or mutual to the tenement, in proportion to the feu-duties payable by each; and the proprietors of the ground or street floors shall be bound to keep the plots of ground in front of their respective houses of Rights in common. feet in depth or thereabouts, as shown Common expenses proportionate to feu-duties.

on the said plan annexed hereto, as ornamental pleasure-ground only, and shall not be entitled to erect or place any building or structure of any description thereon, but shall keep the same clear and redd in all time coming, and they shall be bound to keep up and maintain the parapet walls and railings enclosing said plots of ground in front of their respective houses; and the proprietors of the houses entering by the common stair shall be bound to keep up and maintain said stair and the passage leading thereto at joint expense, in proportion to the feu-duty payable by them respectively. (*Fourth*) In respect Front plots. that the said X has formed the main drain or sewer in Drainage.

, so far as for the houses to be built on the ground hereby feued, and that the proportion of the expense applicable to the subjects hereby feued has been paid to the said X by my said disponees, the said drain shall be maintained in so far as applicable to the subjects hereby disposed, half at the expense of my said disponees in all time coming, the other half being main-

tained by the said X and his successors in said subjects, or the feuars on the opposite side of the said road or street; and my said disponees shall be bound to connect the drains or soil-pipes of the buildings to be erected by them with said sewer during the erection of such buildings, all to the satisfaction of the Burgh Engineer of

or any one appointed by the said X or his foresaids: DECLARING that the other feuars of the lands of Z shall be at liberty to connect their drains with the said main drain or sewer; and my said disponees shall have no right to make any claim for compensation or otherwise for the use of said main drain or sewer being communicated by the said X to any other person or persons whatsoever, the exclusive right to make such claim being reserved to him entire.

Streets and  
pavements.

(*Fifth.*) My said disponees shall, in so far as not already done, form the whole width of street along

, so far as opposite the piece of ground hereby feued, with carriage-way, dressed channels, and footpath; and they shall be bound to pave the footpath on the side adjoining the ground hereby feued with good pavement, and to make the footpath on the opposite side of said road or street with ashes or other material to be approved of by the said X or his foresaids—said road or carriage-way, water-channels, and footpaths to be formed on the levels laid down on a plan prepared by the said

and, so far as not taken over by the public authorities, shall be completed to the satisfaction of the Burgh Engineer or other qualified party to be named by the said X, and be thereafter entirely maintained in good repair by my said disponees, all at their own cost; and my said disponees shall be entitled to relief from the feuars on the opposite side of the said road of one-half of the future maintenance of said road or carriage-way; and when the ground on the opposite side of said road or street is built upon, my said disponees shall be entitled to relief and repayment from the feuars there of one-half of the cost of the original formation of said road or carriage-way, water-channel, and footpath adjoining the same, and of the future maintenance of said road or carriage-way; but my said disponees shall have no claim upon the said X or his foresaids for any part of the expense of forming or maintaining said road or carriage-way, water-channels, or footpaths: AND in the event of the feuars on the opposite side of said road or street having first formed said road or carriage-way, and the water-channel and footpath on the side adjoining the

subjects hereby feued, my said disponees shall be bound to make payment to them of one-half of the cost of the original formation of said road or carriage-way, and of the water-channel and footpath on the side adjoining the subjects hereby disposed, and to relieve them of one-half of the cost of future maintenance of said road and carriage-way; and my said disponees shall relieve the said X and his foresaids of all questions with or liability to the Burgh Authorities as to the construction and maintenance of the said road, water-channels, and footpaths. (*Sixth*) That it shall not be lawful to my said disponees to occupy or convert the said tenement, or any part thereof, into a shop or shops or wareroom for the sale of goods and merchandise, or into working houses or manufacturing premises of any kind, nor to use the same, or any part thereof, for these or the like purposes, or for any other purpose which may be deemed a nuisance; it being hereby declared that the said subjects hereby disposed shall be used as dwelling-houses only, nor shall it be lawful to my said disponees to deposit any nauseous materials, dunghoops, nuisances, or obstructions on said ground hereby feued, or the roads, streets, or footpaths adjoining the same, nor to do any other act which may injure the amenity of the place for dwelling-houses. (*Seventh*) That the said X and his foresaids shall have power to make or allow whatever alteration or deviation he or they may choose upon the feuing-plan of the lands and estates of Z, or roads or drains thereof, or even to depart entirely therefrom, and power also to allow any feuar to make any alterations on his buildings, or the purposes for which the same may be used, or otherwise, notwithstanding the terms of his charter or contract: AND in the event of the exercise of any one or more of these powers by the said X or his foresaids, my said disponees shall have no right or title to object thereto. And (*Eighth*) That if my said disponees shall contravene or fail to implement any of the reservations, conditions, restrictions, obligations, provisions, and declarations herein written, this present feu-right, and all that may have followed thereon, as regards the subjects of such contravention, shall, in the option of the said X or his foresaids, become void and null, without declarator or other process of law to that effect, any law or practice to the contrary notwithstanding, and my said disponees shall amit and forfeit all right and interest in the subjects of such contravention, which shall in that event revert to the said X, or his foresaids, in like manner as

Prohibition  
of shops, &c.

Superior  
can alter  
feuing plan.

Irritancy  
and resolu-  
tive clause.

if these presents had never been granted, without prejudice to the legal rights and remedies of the said X, or his foresaids, against my said disponees for payment of the bygone feu-duties, and performance of the prestations incumbent on them under these presents prior to the date of such forfeiture; all which reservations, conditions, restrictions, obligations, provisions, and declarations, with this irritant and resolute clause, are hereby created real burdens, and are appointed to be set forth at full length, or validly referred to according to law, in all future rights, transmissions, and investitures of the ground hereby disposed, or any part thereof, otherwise the same shall be void and null; with entry as at the term of

Entry.  
Reddendo  
clause.

: To be holden the said area of ground of and under the said X and his foresaids in feu-farm, fee, and heritage for ever, paying therefor yearly, my said disponees, to the said X and his foresaids the *cumulo* feu-duty of                      sterling per annum for the whole of the foresaid area hereby disposed, payable said feu-duty at the term of                      yearly, commencing the first payment of said feu-duty of                      at the term of                      for the year preceding, and the next year's payment at                      , and so forth yearly and termly thereafter in all time coming, with a fifth part more of each term's payment of liquidate penalty in case of failure in the punctual payment thereof, and the interest of each year's payment at the rate of £5 per centum per annum from the time the same falls due until paid, and paying a duplicand of the said feu-duty at the term of                      , and at the term of

Right of  
vassal to  
apportion  
feu-duty.

in every twenty-first year thereafter, in the name of casualties, with interest till paid, and penalties in the case of failure if incurred, all as provided with respect to said feu-duties: DECLARING that it shall be in the power of my said disponees, on disposing of any part of the tenement to be erected on the piece of ground hereby disposed, to apportion upon it a share to be approved of by the superior of the *cumulo* feu-duty and duplication thereof before mentioned; and on such apportionment being made by my said disponees, and being approved of as aforesaid, the proprietor of such part shall thereafter be entitled to be entered with or acknowledged by me for payment of such share of said feu-duty and relative duplication (a):

Assignment  
of writs.

AND I, as Commissioner foresaid, assign the writs, but to the effect

(a) For alternative form of allocation with augmentation see "Special Clauses," No. (7), p. 21.

only of maintaining and defending the rights of my said disponees in the said subjects; and for that purpose I OBLIGE my constituent and his foresaids to make the same furthcoming to my said disponees at their expense on all necessary occasions, and that upon a receipt and obligation to redeliver the same within a reasonable time and under a suitable penalty: AND I, as Commissioner foresaid, assign the rents: AND I, as Commissioner foresaid, bind my constituent to free and relieve my said disponees of all feu-duties and casualties, and other duties and services payable to or exigible by my constituent's superior now and in all time to come; and also to relieve my said disponees of all minister's stipend, and all public, local, and parochial burdens due from or on account of said subjects prior to said term of entry under these presents, my said disponees relieving him thereof in all time thereafter: AND I for my own part grant warrandice from fact and deed, and bind my constituent in absolute warrandice: AND I consent to registration hereof for preservation.—  
IN WITNESS WHEREOF, &c.

Assignment  
of rents.

Relief of  
burdens.

Warrandice.

### 5. Special Clauses.

#### (1.) RESERVATION OF MINERALS, AND POWER TO WORK WITHOUT LIABILITY FOR DAMAGE.

BUT reserving always to me and my heirs and successors, all coal, ironstone, whin, lime, and freestone, and all other metals, mines, minerals, and stone of every description under and below the ground hereby feued, and full power to me and my foresaids and my or their tacksmen or others in our names to work, win, and carry off said coal, ironstone, and others hereby reserved, and that free of all or any loss or damage which may be occasioned to the said B or his foresaids. And it is expressly agreed as a condition of this Feu-Charter, and in respect that the said minerals and others before reserved are more valuable than the surface, that I and my foresaids and my or their tacksmen or others deriving right from us shall not be liable for any damage that may happen to the said piece of ground or buildings erected or to be erected thereon, or to the water supply or drainage thereof, or in any other manner of way by or through the working of the said coal, ironstone, whin, lime, and freestone, or other metals, mines, minerals or stone in and under the same, or in the neighbourhood thereof, by longwall workings or otherwise either in

time bygone or in future, or which may arise from or through the settling or crushing of any coal waste or other excavations presently existing or which may exist hereafter within or in the neighbourhood of the ground hereby feued through the superior or his foresaids or his or their tacksmen, or others deriving right through them, working or draining the said metals, mines, and minerals, or others as aforesaid, all which has been taken into account in fixing the feu-duty after mentioned.

### (2.) RESERVATION OF POWER TO DIVIDE SUPERIORITY.

When the feu-duty is of considerable amount, it may be desirable for the superior to reserve power to divide it among several purchasers; and this may be done by a clause in the following terms:—

AND it is hereby EXPRESSLY PROVIDED and DECLARED that it shall be lawful to me, my heirs and successors, any law or practice to the contrary notwithstanding, to divide, alienate, dispone, and convey at pleasure the *dominium directum* or superiority of the subjects hereby disposed, in such shares and proportions (*if desired add*, not exceeding in number), and to such person or persons, as I or my foresaids shall think proper, without the concurrence of the said B or his foresaids, who by acceptance hereof agrees for himself and his foresaids to such dividing of the superiority, and consents to hold under the several superiors to whom I or my foresaids shall think fit to dispone the said *dominium directum* or superiority.

### (3.) CLAUSE OF PRE-EMPTION.

Feu-charters sometimes contain a clause of pre-emption (*a*), that is to say, a stipulation that if the vassal proposes to sell the lands, he shall give the superior the option of purchasing at the price agreed to be paid by any third party. An irritant clause is not necessary for its enforcement; but as circumstances may arise in which an irritancy may prove useful as a more stringent mode of effecting the superior's purpose than a bare stipulation, it ought to be inserted where this is meant to be a condition of the agreement of parties and of the grant. The clause constructed upon the above principles may be expressed as follows, and must enter the record in order to be effectual against singular successors:—

AND FURTHER, it is hereby PROVIDED and DECLARED that it shall not be lawful to nor in the power of the said B and his foresaids to

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(a) See the case of *M'Elroy v. Duke of Argyll*, 1902, 4 F. 885, as to the effect of the Tenures Abolition Act, 1746 (20 Geo. II. c. 50, s. 10) (1902).

sell, alienate, or dispoſe the ſaid ſubjects, or any part thereof, to any perſon or perſons whatſoever (except under ſtatutory authority or compulſion) until the ſaid B or his foreſaids ſhall have firſt made a written offer to ſell the ſame to me or my heirs or ſucceſſors, ſuperiors thereof, at the like rate or price that may be offered by any other perſon, and which offer I or my foreſaids ſhall be allowed free days to accept or decline: AND that the ſaid B and his foreſaids ſhall not be entitled to ſell the ſame to any perſon or perſons under the price at which the ſame ſhall have been offered to and reſuſed by me or my foreſaids without making a new offer at ſuch reduced price in ſimilar manner and ſubject to the like conditions: AND if the ſaid B or his foreſaids ſhall do in the contrary, then and in that caſe, not only ſhall the right to be granted by him or them to any other perſon or perſons be void and null without declarator, but alſo the ſaid B and his foreſaids ſo contravening the preſent provision and declaration ſhall thereby forfeit their right to the foreſaid ſubjects, and the ſame, with all buildings and other erections thereon, ſhall revert and return to me and my foreſaids to the ſame effect as if theſe preſents had never been granted, without prejudice however to the legal rights and remedies of me and my foreſaids againſt the ſaid B and his foreſaids for payment of all feu-duſties and implement of all preſtations incumbent on them under theſe preſents prior to the date of forfeiture.

#### (4.) CLAUSE OF REDEMPTION.(a)

PROVIDING ALWAYS, as it is hereby expreſſly provided and declared that it ſhall be in the power of the ſaid A and his heirs and ſucceſſors to repurchase and acquire the ground hereby diſpoſed, and the whole buildings and others to be erected thereon as aforeſaid, at the term of 19 , or at any term of Whitsunday or Martinmas thereafter, on giving the ſaid B or his foreſaids ſix months' previous written notice of ſuch their intention, and on payment by the ſaid A and his foreſaids of the ſum of £ [or of ſuch price therefor as ſhall be fixed by two arbiters (*here detail method of arbitration, &c., and alſo add principle of valuation to be adopted*)], which ſeveral conditions, provisions, and reſervations hereinbefore ſpecified are hereby declared real and preferable

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(a) See *M'Elroy v. Duke of Argyll*, 1902, 4 F. 885.

burdens affecting the said piece of ground hereby disposed and buildings thereon, and by which the conveyance thereof is hereby expressly modified and restricted, and shall be inserted in any Notarial Instrument to follow hereon, and inserted or validly referred to in all future deeds of transmission, decrees, instruments, or other writs of or relating to the said subjects or any part thereof, otherwise such deeds, decrees, instruments, and writs shall be void and null.

(5.) CLAUSE OF IRRITANCY *ob non solutum Canonem*.

By the Statute of 1597, c. 250, the vassal incurs an irritancy or forfeiture of the feu by failing to pay the feu-duty for two years together without any special provision to this effect being required. The superior, however, sometimes desires to have an express declaration of his right to irritate the feu *ob non solutum canonem* inserted in the feu-right.

Such an irritant clause may be expressed as follows :—

DECLARING that if at any time the said B or his foresaids shall allow the feu-duties after specified of two consecutive years to run into a third unpaid, then these presents, with all that has followed or may follow thereon, shall be *ipso facto* null and void without declarator, and I and my foresaids shall instantly be at liberty to remove the said B and his foresaids from the subjects before disposed; nor shall it be competent for him or them to purge this irritancy at the Bar in any process of declarator or removing or other process which we may bring against them.

(6.) PROVISION AS TO ALLOCATION OF FEU-DUTY BY VASSAL,  
WITHOUT AUGMENTATION.

If the superior means to renounce his right to demand the whole feu-duty from any part of the lands in the event of their being sub-feued or sold in separate parcels, the following clause will be introduced :—

DECLARING ALSO, that in case the said B or his foresaids shall sub-feu, sell, or dispose the said subjects in separate parcels, such parcels shall thereafter be liable in payment only of a proportion of the *cumulo* feu-duty hereinafter specified, corresponding to the proportion which the space of ground sub-feued, sold, or disposed bears to the whole subjects hereby feued: PROVIDED ALWAYS, that the said

B or his foresaids shall in the feu-dispositions or other conveyances of such parcels expressly allocate the *cumulo* feu-duty thereon in accordance with the foregoing declaration, and that the proportion of the feu-duty to be so allocated shall in no case be less than £ per annum; AND PROVIDED ALSO that buildings shall, previous to allocation, be erected, and thereafter maintained on each parcel so sub-feued, sold, or disposed, capable of yielding a rent equal to at least [double] the proportion of the *cumulo* feu-duty to be so allocated thereon.

(7.) PROVISION FOR ALLOCATION BY VASSAL OF FEU-DUTY,  
WITH AUGMENTATION.

DECLARING that in the event of the said B sub-feuing, selling, or disposing the subjects hereby conveyed in parts, the annual feu-duty or feu-duties of such parts shall bear the same proportion to the total feu-duty payable for the whole subjects as the part or parts sub-feued, sold, or disposed shall bear to such whole subjects: But in case by this proportion the annual feu-duty payable for any such part so sub-feued, sold, or disposed shall come to be less than £ per annum, then the same shall be augmented in favour of me and my foresaids by an addition thereto of                      per cent. thereof: And neither I nor my foresaids shall be bound to recognise or admit of any subdivision and allocation of the feu-duty where the proportion allocated, including augmentation, shall be less than £                      per annum: On which terms only, and on the erection and maintenance of buildings capable of yielding a rent of at least [double] the amount of the annual feu-duty (including augmentation) to be so allocated, it shall be in the power of the said B or his foresaids to allocate on the parts of the said subjects to be sub-feued, sold, or disposed as aforesaid the *cumulo* feu-duty payable under these presents.

(8.) PROVISION FOR ALLOCATION BY SUPERIOR OF FEU-DUTY  
FOR A TENEMENT.

DECLARING that in the event of any application being made to me or my foresaids by the said B or his foresaids after the said tenement has been completed to my satisfaction for an allocation of a proportion of the said feu-duty and relative duplicand on each house in the said

tenement, I or my foresaids shall always, at the expense of the said B or his foresaids, be bound to execute a memorandum of allocation accordingly, but that only on the following conditions, namely:— (1) That a separate sum is allocated on each separate house in the said tenement; (2) that I or my foresaids shall be the sole judge or judges of the sufficiency of each sum proposed to be allocated on each house; (3) that the said proportions of feu-duty and relative duplicand are augmented according to the following scales, namely—(a) Where the allocated feu-duty is under £1, there shall be an augmentation of 10 per cent.; (b) where the allocated feu-duty is £1 or upwards but is under £10, an augmentation of 5 per cent.; and (c) where the allocated feu-duty is £10 or upwards, an augmentation of 2½ per cent.: With penalty and interest on such augmented feu-duties and relative duplicands as are before stipulated with reference to the original feu-duty and original duplicand; (4) that the said augmented feu-duties shall run from the term of Whitsunday or Martinmas preceding the date of the memorandum of allocation to be granted in terms hereof.

(9.) STIPULATION IN CHARTER BY AN HEIR OF ENTAIL AS TO  
ERECTION OF BUILDINGS, &C.

31 & 32 Vict.  
c. 84, s. 5.

It will be kept in mind that by the Entail Amendment Act of 1868, which confers on heirs in possession of entailed estates power to grant feus, building leases, &c., it is provided that every feu-charter, lease, or disposition granted under the Act shall contain a condition that the same shall be void (and such deed by the Act is declared void) if buildings of the annual value of at least double the feu-duty, rent, or ground-annual therein stipulated shall not be built within the space of five years from the date of such grant upon the ground comprehended therein, and that the said buildings shall be kept in good, tenantable, and sufficient repair; and that such grant shall be void whenever there shall not be buildings of the value foresaid kept in such repair as aforesaid standing upon the ground so feued, leased, or disposed.

A form of such clause is given below:—

DECLARING that the said B (*the feuar, tenant, or as the case may be*) and his foresaids shall be bound and obliged, within the space of five years from the date of these presents, to erect, and in all time thereafter to maintain in good, tenantable, and sufficient repair, upon the subjects hereby feued (*leased, or otherwise as the case may be*), buildings which shall be of the annual value of at least double the feu-duty (*rent, or ground-annual, as the case may be*) stipulated and payable

under these presents; and if the said B or his foresaids shall in any way contravene or act contrary to or fail to fulfil the conditions of this grant, and specially without prejudice to said generality, whenever there shall not be buildings of the value foresaid kept in such repair as aforesaid standing on the ground feued (*leased, or otherwise as the case may be*) under these presents, then these presents, together with all conveyances, instruments, and other writs following hereon, and acts, if any, done in contravention as aforesaid, together with all that has followed or may follow hereon, shall be absolutely irritated and resolved, and shall be *ipso facto* void and null, and the said subjects and others shall revert to me (*the granter*) and my foresaids, all without the necessity of any action of declarator or other process of law.

(10.) CLAUSE CONFERRING COMMON INTEREST TO ENFORCE  
CONDITIONS, &c.

ALL which burdens, conditions, provisions, restrictions, and obligations shall be real burdens, and shall constitute and operate as servitudes on the said lot or area (*or lots or areas*) of ground hereby disposed, in favour of myself and my successors in my said lands, and also in favour of the purchasers or feuars of the other lots or areas of ground delineated on the said ground plan, who and the said B and his foresaids shall respectively be entitled to compel each other to a strict adherence of the same, for which purpose I bind and oblige myself and my foresaids to insert the same burdens, conditions, provisions, restrictions, and obligations in all feu-rights or conveyances of such other lots or areas of ground, and validly and effectually to constitute them real burdens and servitudes thereon in favour of the said B and his successors in the said lot or area of ground (*or lots or areas of ground respectively*) hereby disposed, and to take the said purchasers or feuars respectively bound to implement and fulfil the same; but declaring that, in case of any deviation therefrom or infringement thereof, the said B and his foresaids shall have no claim against me or my foresaids in consequence thereof, but shall have it in their power to take such measures as they may deem proper against the person or persons so deviating or infringing, to compel implement and performance of the said burdens, conditions, provisions, restrictions, and obligations.

## (11.) REAL BURDENS—MONEY.

Real burdens of sums of money, which are frequently imposed either in favour of the superior or of some third party, form a most important class of restrictions upon the rights of vassals. *In order that these may affect the subject, the amount must be definite*, as our law does not allow real estate to be burdened with indefinite sums. Moreover, *the clause declaring the burden must enter the Register of Sasines*. Although the words employed must be precise, no *voces signatæ* are required, *but the intention to affect the lands must be so clearly expressed as to leave no room for doubt*. Real burdens affecting the subject, on the other hand, if of the *naturalia* of a feudal grant, may be effectually imposed without specifying the amount.

For examples of forms for expressing real burdens, see below, Title II.

## (12.) CLAUSE OF REFERENCE TO DEED SETTING FORTH CONDITIONS.

It frequently happens that a proprietor grants a series of feu-rights of his lands under precisely similar conditions; and, under the law as it stood prior to 1874, it was considered essential that in every case these conditions should be repeated at length in the deed constituting each separate feudal estate. The Conveyancing Act of 1874, however, enacted (s. 32) that "reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations affecting land may be validly and effectually imported into any deed, instrument, or writing relating to such lands by reference to a deed, instrument, or writing applicable to such lands or to the estate of which such lands form a part, recorded in the appropriate Register of Sasines, and in which such reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations are set forth at full length; and a reference in the form set forth in Schedule H hereto annexed, or in a similar form, shall be sufficient." By the same section, it is further enacted that "it shall be lawful for any proprietor of lands to execute a deed, instrument, or writing, setting forth the reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations under which he is to feu or otherwise deal with or affect his lands, or any part thereof, and to record the same in the appropriate Register of Sasines, and the same being so recorded, such reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations may be effectually imported in whole or in part by reference into any deed or conveyance relating to such lands subsequently granted by such proprietor, or by his heir or successor, or by any person whatsoever, provided it is expressly stated in such deed or conveyance that it is granted under the reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations set forth in such deed, instrument, or writing." In place, therefore, of inserting at length in each feu-charter the reservations, real burdens, conditions, &c., of which we have already given examples, a deed of declaration, or other deed containing the whole reservations, real burdens, conditions, and others under which he intends to deal with the subjects, may be executed and duly recorded in the appropriate Register of Sasines by the superior, and in subsequent deeds reference may be made to such recorded reservations, real burdens, conditions, and others in the form authorised

by Schedule H appended to the Act. A form of such deed is given at p. 32 below, and if desired reference thereto may be made in the following terms :—

BUT DECLARING HEREBY that the foresaid subjects are disposed with and under the whole reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations (*or as the case may be*) specified in (*refer to the deed, instrument, or writing in such terms as shall be sufficient to identify it, and specify the Register of Sasines in which it is recorded, and the date of registration*).

(13.) APPORTIONMENT OF BURDENS BETWEEN SUPERIOR  
AND VASSAL.

(a) *Apportionment of Stipend.*

When, as is usually the case, the ground contained in the feu-charter is only a part of the superior's lands, the public burdens are frequently apportioned between the part conveyed and the part retained; and this may be done by stipulating for a fixed annual payment in lieu of taxes and burdens, to be made to the superior in addition to the feu-duty, the superior being in this case bound to relieve the vassal of future payment of such taxes or burdens, and any augmentations thereof. Such a stipulation if desired should be inserted at the close of the reddendo :—

AND FURTHER, the said B and his foresaids paying to me and my foresaids the sum of                    sterling at the term of                    yearly, in addition to said feu-duty, being the proportion hereby allocated on the subjects before disposed of the minister's stipend due and payable for the whole of my lands in the said parish, of which said subjects are part.

(b) *Obligation to Relieve of Public Burdens, &c.*

Section 8 of the Consolidation Act of 1868 provides that the clause in the form "*I bind myself to free and relieve the said disponee and his foresaids of all feu-duties, casualties, and public burdens,*" "shall, unless specially qualified, be held to import an obligation to relieve of all feu-duties or other duties and services or casualties payable or prestable to the superior, and of all public, parochial, and local burdens due from or on account of the lands, conveyed prior to the date of entry."

As the statutory form, however, is adapted rather to the case of the transmission of an existing feudal estate, we would suggest that in original grants the form given on p. 2 should be used. Where the parties have made a different arrangement as to the payment of such duties from what is there expressed, this must, of course, be specially mentioned, and may be in such form as the following clause, which has special reference to our remarks on the reddendo clause in the case of minister's stipend :—

AND I bind myself and my foresaids to free and relieve the said B

and his foresaids of all public and parochial burdens or assessments exigible prior to said term of entry, and also of all feu-duties and casualties, or sums of money in lieu thereof, payable to my superiors, and in consideration of the foresaid annual payment of £ sterling to be made by the said B and his foresaids, likewise of all minister's stipend and augmentations thereof, now and in all time coming, but that only to an extent not exceeding in any year one-half (*or such other proportion as may be agreed on*) of the annual feu-duty payable for the said subjects.

It will be kept in view by the conveyancer that an unqualified obligation of relief may prove very dangerous (*see case of Dunbar's Trustees v. British Fisheries Society*, 12th July 1878, 5 R. (H.L.) 221), and that at any time such should be given with great caution. The case where it is likely to be most frequently employed is for minister's stipend, as above shown, where the teind is valued, and where the superior may measure with certainty the extent of his liabilities, present and future, under such an arrangement.

#### (14.) CLAUSE RELIEVING SUPERIOR OF TENANT'S CLAIMS.

THE said B and his foresaids shall relieve me and my foresaids of all claims which the agricultural tenant of the said piece of ground may have for growing crops and unexhausted manure, or on any other account whatever (excepting always his claim for reduction of rent), and the said B and his foresaids shall be bound to arrange personally with said tenant as to access and entry to the said piece of ground.

#### (15.) CLAUSE OF WARRANDICE.

When it is intended to extend or to limit and qualify the ordinary warrandice, this must be made the subject of a special clause. The statute makes no distinction between onerous and gratuitous grants. In the latter it will be proper, in using the new form, to add the words "from fact and deed only."

If the lands feued be under lease at the time, the following exception will be made in the clause of warrandice:—

BUT EXCEPTING ALWAYS from the said warrandice any leases or missives of lease affecting said subjects, without prejudice nevertheless to the right of the said B and his foresaids to quarrel and impugn the same upon any ground in law which shall not infer recourse against me or my foresaids.

Where the charter is granted by trustees, it will, in the ordinary case, contain, in place of the clause of absolute warrandice, an obligation on the

trustees to warrant from fact and deed, and an obligation of absolute warrandice against the party or parties having the beneficial interest in the trust-estate, as follows :—

AND WE, as Trustees foresaid, WARRANT these presents from our own facts and deeds only, AND BIND and OBLIGE the trust-estate under our charge, and the parties beneficially interested therein, in absolute warrandice.

#### (16.) CLAUSE OF REGISTRATION.

The Consolidation Act of 1868 provides (s. 138) that the short form of the clause of registration which we have given above in the form of feu-charter “shall, unless specially qualified, import a consent to registration and a procuratory of registration in the Books of Council and Session, or other Judge’s books competent, therein to remain for preservation.” The registration of feu-charters is still regulated by the provisions of the Statute 1693, c. 35, which directs that “charters granted by subaltern superiors may bear a clause of registration, as well as dispositions, and that on the said clauses registration may follow, but only in the Books of Council and Session, *and in no other record.*” It may be well to point out that this latter enactment relates merely to registration for preservation (or for preservation and execution), and is in no way affected by the statutory provisions which allow the registration of a conveyance in the Register of Sasines for publication. The mode of publication of this and other real rights is described in the last section of this Title.

#### (17.) CLAUSE OF DIRECTION.

Where it is desired to record only part or parts of the deed, it is competent to insert immediately before the testing clause of a conveyance of lands a clause of direction specifying the part or parts which the granter desires to be recorded in the Register of Sasines. This matter is regulated by section 12 of the Consolidation Act of 1868.

The following is an example :—

AND I direct to be recorded in the Register of Sasines the part of this deed from its commencement to the words (*insert words*) on the            line of the            page [and also the part from the words (*insert words*) on the            line of the            page to the words (*insert words*) on the            line of the            page]. [*Or I direct the whole of this deed to be recorded in the Register of Sasines, with the exception of the part (or parts, as the case may be, specifying the part or parts excepted, as above).*]

## (18.) TESTING CLAUSE.

The testing clause should contain a notice of any marginal addition that may be made on any of the pages of the deed, and any such addition must be duly authenticated by the party's signature ; otherwise it will be held *pro non scripto*. The ordinary form is as follows:—"In witness whereof, these presents, consisting of this and the preceding pages, together with the marginal addition of words on page hereof, all written by G, clerk to H, are subscribed by me at Edinburgh," &c. Then follow the date of signing and the names and designations of the subscribing witnesses.

When a word or words, or any other portions of the deed, are written upon parts from which other words have been erased, or when any words have been deleted, the following addition should be made to the testing clause after the word "are," and before the words "subscribed by me":—"Under the declaration that the words (*quote them*) on the line, counting from the top of the page hereof, are written on an erasure (or are delete) before subscription." All declarations of this kind *should be inserted before subscription*, and of course before the names and designations of the witnesses. Since the decision in the case of *Blair v. The Assets Company, Ltd.* (1896), 23 R. (H. L.) 36, some conveyancers make a point of inserting *before the testing clause* a special clause specifically detailing all the marginal additions, erasures, interlineations or other alterations occurring in the deed : and this method is in the case of important alterations, &c., to be recommended in preference to the old method of declaring them *in the testing clause*.

## SECTION II

## THE FEU-DISPOSITION

As the feu-right came to differ very little from the common disposition, conveyancers frequently laid aside the form of a charter and substituted in its stead the feu-disposition or disposition *de me*. In point of form, however, it is now identical with the modern feu-charter, the style of which has been already given, and need not therefore be here repeated.

## SECTION III

## THE FEU-CONTRACT

We have hitherto exemplified only the unilateral deed by which the feudal right is created. When, however, either of the parties or both enter into obligations which it may be desirable to enforce by direct personal diligence upon the deed, the transaction is accomplished by a mutual contract.

The terms of the feu-contract, except as regards mere style, must depend in every case on the agreement of parties. All privileges in favour of the vassal, or reservations by the superior, should be inserted in the dispositive clause. The other conditions of the grant the conveyancer can be at no loss how to introduce in their proper places, from the forms already given for the feu-charter.

It is unnecessary to point out the various situations in which a feu-contract may be advisable. The following example suffices to show what is peculiar in the form of this deed :—

IT IS CONTRACTED AND AGREED between the parties following, viz.,  
 A, heritable proprietor of the subjects after mentioned, ON THE ONE PART, and B, ON THE OTHER PART, in manner following: THAT is to  
 to say, the said A, IN CONSIDERATION of the sum of £        sterling  
 instantly paid to him by the said B, of which he hereby acknow-  
 ledges the receipt and discharges the said B, and also IN CONSIDERA-  
 TION of the feu-duty and other prestations after stipulated, hereby  
 SELLS and in feu-farm DISPONES to and in favour of the said B, and  
 his heirs and assignees whomsoever, heritably and irredeemably (but  
 excluding assignees before infeftment on or registration of these  
 presents in the Register of Sasines: And DECLARING that the same  
 shall not be a valid warrant for such infeftment, nor shall be so  
 registered after the expiry of three months from the date hereof),  
 ALL AND WHOLE (*here describe the subjects, and if there are any reser-  
 vations, real burdens, conditions, &c., under which the feu-right is to  
 be granted, say*) But always with and under the reservations, real  
 burdens, conditions, provisions, restrictions, and qualifications (*or  
 such of these as may be applicable*) following, viz. (*here insert them,  
 and add*) All which reservations, burdens, conditions, &c. (*as the case  
 may be*), are hereby declared real and preferable burdens upon and  
 affecting the subjects hereby disposed, and are appointed to be  
 inserted in any notarial instrument to follow hereon, and to be  
 inserted or validly referred to in all future deeds of transmission,  
 decrees, instruments, and other writs of or relating to the said  
 subjects or any part thereof, otherwise such deeds, decrees, instru-  
 ments, and writs shall be void and null: WITH ENTRY at the term of Entry.  
 : TO BE HOLDEN of and under the said A, and his heirs  
 and successors, in feu-farm, fee, and heritage for ever, for payment  
 of the feu-duty and periodical duplicands [*add if necessary—and for  
 performance of the other prestations*] hereinafter written: AND the  
 said A assigns the writs, but to the effect only of maintaining and  
 defending the said B and his foresaids in the right of the subjects

Narrative  
clause.

Dispositive  
clause.

Tenendas.

Assignment  
of writs.

hereby disposed, and for that purpose he obliges himself and his foresaids to make the same to the extent of a legal progress forthcoming to the said B and his foresaids, at their expense, on all necessary occasions, and that on a receipt and obligation to redeliver the same within a reasonable time and under a suitable penalty:

Assignment  
of rents.  
Obligation  
to relieve of  
public bur-  
dens, &c.

AND the said A assigns the rents: AND the said A binds himself and his foresaids to free and relieve the said B and his foresaids of all feu-duties and casualties, payable to his, the said A's, superiors now and in all time coming, and of all public and parochial burdens or assessments exigible prior to said term of entry (*if any arrangement such as that referred to on p. 31 be made for payment of the burdens, this clause will continue*—the obligation on the said B and his foresaids for future payments being qualified and explained as under written): AND the said A grants warrandice: FOR WHICH

Warran-  
dice.  
Reddendo.

CAUSES, and ON THE OTHER PART, the said B BINDS and OBLIGES himself, and his heirs, executors, and successors whomsoever in the said subjects, conjunctly and severally, to make payment to the said A and his heirs, successors, or assignees of the sum of £ sterling yearly in name of feu-duty for the said subjects, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the term of

for the half-year preceding, and the next term's payment at following, and so forth at the said two terms in the year in all time thereafter, with a fifth part more of each term's payment of liquidate penalty in case of failure in the punctual payment thereof, and interest at the rate of five per centum per annum from the respective terms of payment during the not-payment of the same: AND FURTHER, to pay to the said A and his foresaids, the additional sum of £ sterling, at the term of in the year , being a duplication of said feu-duty for that year, and a similar duplication at the same terms in every twenty-first year thereafter, and that over and above the annual feu-duty for the respective years in which the said additional sums shall become due, with a fifth part more of each of the said additional sums of liquidate penalty for each failure in punctual payment thereof, and interest at the rate of five per centum per annum of each of the said additional sums from the terms at which the same fall due. [*If any arrangement for division of public burdens, &c., has been entered into, it may be expressed as follows:—*AS ALSO the

said B BINDS himself and his foresaids to pay to the said A and his foresaids the sum of                    sterling, at the term of                    in each year, in addition to the feu-duty then payable, being the proportion hereby allocated on the subjects before disposed of the minister's stipend, *or other burdens, as the case may be; or if no arrangement or allocation has been made, and a more comprehensive form is desired, it may run*—AS ALSO the said B BINDS himself and his foresaids to pay to the minister of                    and his successors Obligation to make payment of stipend and cess, &c. in office the sum of £                    of stipend payable to the said minister, and £                    of cess or land tax, being the proportions of these burdens agreed to be paid furth of the subjects before disposed, and that yearly, commencing with the year for which the first year's feu-duty is payable as aforesaid, and to report to the said A and his foresaids, when required, discharges of the foresaid annual burdens (*and where such is so arranged add*—AND ALSO to pay and relieve the said A and his foresaids in all time coming, not only of the said burdens to the extent of the sums above written, but also of all augmentations thereof in the proportion which the said sums presently bear to the total sums charged upon the whole lands and others of which the subjects hereby disposed form part): AND ALSO to pay and relieve the said A and his foresaids of all other public and parochial burdens and assessments imposed on the subjects before disposed, or to become due and payable furth thereof, and that whether in virtue of laws and Acts of Parliament already in force or to be enacted—*care being taken in each case to see that the wishes of parties are effectually carried out.*] DECLARING that, in case the said B or his foresaids shall at any time hereafter fail to pay the foresaid feu-duty as the same falls due, and shall allow a full year's feu-duty to remain due and unpaid at any one time in respect of the said piece of ground, this feu-contract, and all following thereon, shall in the option of the superior become void and null, and the said piece of ground and whole buildings thereon shall immediately revert and return to the said A and his foresaids, freed and disencumbered of this feu-right and all following thereon: AND FURTHER, the said B binds and obliges himself and his foresaids to implement and perform the whole other prestations, conditions, and provisions herein contained incumbent on them: AND both parties consent to the registration hereof for preservation and execution.—In WITNESS WHEREOF, &c. Clause of registration.

## SECTION IV

## DEED OF DECLARATION OF PROVISIONS AND CONDITIONS UNDER WHICH LANDS ARE TO BE FEUED OR OTHERWISE DEALT WITH

It has been mentioned (p. 24) that the Conveyancing Act of 1874 provides a mode of importing reservations, real burdens, conditions, and others into any deed, instrument, or writing relating to such lands by reference (in the form of Schedule (H) annexed to that Act, or a similar form) to a deed applicable to such lands, or to the estate of which they form part, containing such reservations and others set forth at full length and recorded in the appropriate Register of Sasines. The same section further allows any proprietor of lands to execute a deed, instrument, or writing, setting forth the reservations, real burdens, conditions, and others under which he is to feu or otherwise deal with or affect his lands, or any part thereof, and to record the same in the appropriate Register of Sasines, and when this is done, such reservations, real burdens, conditions, and others may be effectually imported in whole or in part by reference into any deed or conveyance relating to such lands subsequently granted by the proprietor thereof, or any other person, provided it be expressly stated in such deed or conveyance that it is granted under the reservations, real burdens, conditions, and others set forth in such recorded deed, instrument, or writing.

This provision is a useful one, and might, we think, with propriety be more frequently adopted—*e.g.*, where lands in large towns are feued for the erection thereon of the smaller class of dwelling-houses, and where consequently it may be an object to curtail the length and diminish the expense of feu-charters. The following is an example of a deed containing such conditions relative to feu-rights :—

Narrative  
clause.

I, A, heritable proprietor of ALL AND WHOLE (*here describe or validly refer to the lands proposed to be feued or dealt with*), CONSIDERING that I have determined to feu out said lands or portions thereof with and under the burdens, conditions, and others after written, and that it is proper and expedient to set forth and declare the various particulars after written with regard to the buildings to be erected, and the reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations under which the said lands or portions thereof shall be held, and the rights and obligations of the respective, feuars, and that in order to avoid the repetition *ad longum* of all such reservations, real burdens, conditions, and others in each of the feu-charters or other writs to be granted by me or my successors, superiors of the subjects to be so feued, I have resolved, in terms of the powers conferred by the thirty-second section of "The Conveyancing (Scotland) Act, 1874," to execute these presents, so that the said reservations,

real burdens, conditions and others may (in so far as respectively applicable) be imported into all the charters or other writs to be hereafter granted by me or my foresaids, as well as all conveyances or investitures to be thereafter granted of and relating to the portions to be so feued, by reference to these presents, DO THEREFORE, in virtue of said Act, hereby PROVIDE, SET FORTH, and DECLARE that the portions of said subjects which may be so feued or otherwise dealt with as aforesaid, along with the buildings which are or may hereafter be erected thereon, and the separate flats, half flats, or houses into which the same may be divided, and the respective proprietors thereof for the time being, shall be subject to, and burdened with, and affected by, the following reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations, or such of them as shall be referred to in the said feu-charters or other writs respectively, all as hereinafter mentioned, viz. (*here insert the various conditions in articulate form*): AND I consent to the registration hereof for preservation. —IN WITNESS WHEREOF, &c.

Declaration  
of pro-  
visions, &c.

Clause of  
registration.

In such a deed there may of course be included any of the reservations or conditions of which we have already given examples in treating of the feu-charter and feu-contract, e.g., the reservation of minerals, of power to alter the feuing-plans, both as to style of buildings and the situation and direction of streets, and the prohibition of nuisances, &c. It may be pointed out, however, that even where a deed of this kind has been granted, the dispositive clause should in the case of each feu-charter specify the rights of the vassal in any subjects of common use and interest, such as mutual walls, common stairs, back areas, &c., as it is not clear that such interests come within the scope of the provisions of section 32 of the Conveyancing Act above referred to. Reference to this deed when recorded may be made in terms of Schedule (H) of the Conveyancing Act.

## SECTION V

### SERVITUDES

Rights of servitude are divided into *positive* and *negative*.

Positive servitudes may be acquired either by express grant or reservation in the titles of the servient tenement, when flowing from the proprietor of the dominant tenement, or by prescription. Negative servitudes are constituted only by express grant, and can be lost only by prescriptive usage adverse to the servitude or by express renunciation.

Servitudes belong to the class of rights which may or may not be feudalised by infestment at the pleasure of the conveyancer. In regard

Positive and  
negative  
servitudes.

Negative  
servitudes  
should be  
published  
in Register  
of Sasines.

to the propriety of infeftment or publication as applied to this right, a distinction may be pointed out between positive and negative servitudes. The former are the subject of direct occupancy. Publication, therefore, is less necessary as to them, since the right may be determined by referring to the state of possession. It is otherwise with regard to negative servitudes, which from their nature cannot become the subject of possession. The rights which constitute them, therefore, ought in every case to be published in the Register of Sasines.

The publication of servitudes, whether positive or negative, may be effected by recording the grant of servitude itself, with warrant of registration in the Register of Sasines, and the deed of constitution should therefore authorise its registration in that record for publication.

Servitudes are usually constituted by or incorporated in a feu-charter or other original writ, and also in ordinary dispositions of the subjects; but frequently a separate grant is made.

Express grants of servitude differ in all material respects so slightly from one another that it is unnecessary to multiply examples, and the following forms may be easily adapted to other cases.

### 1. Grant of Servitude of Pasturage.

Narrative  
clause.

I, A, heritable proprietor of the lands of X, IN CONSIDERATION of the sum of £            sterling paid to me by B, as the price of the right of servitude hereby created, whereof I acknowledge the receipt, DO

Dispositive  
clause.

hereby GRANT and DISPONE to the said B and his heirs and successors in his lands of           , and pertinents thereof, and for the use of the tenants and possessors of the same, lying in the parish of            and county of           , the heritable and irredeemable servitude, right, and tolerance of pasturing their cattle and bestial upon the muir of           , lying in the parish of            and county foresaid, with all the necessary liberties of roads and passages to and from the same: WITH ENTRY at           : TO BE HOLDEN *de me* for payment of

Entry.  
Tenendas.  
Reddendo.

a penny Scots yearly, if asked only (*here insert clauses for exhibition of titles when necessary, and of warrandice*): AND I consent to registration

Clause of  
registration.

hereof for preservation.—IN WITNESS WHEREOF, &c.

### 2. Grant of Servitude for Laying Down and Maintaining a Water-pipe.

Grants of wayleave for water-pipes, &c., not unfrequently take the form of mutual agreements containing a disposition of the land actually to be occupied by the line of pipe, reservoirs, and works. As the pipe at common law is entitled to support, care should be taken, where minerals

exist, to reserve these, with power to work them, with or without payment for damages, as may be agreed on. The consideration to be paid for the wayleave, if any, should always be stated.

I, A, heritable proprietor of the lands and others after described, IN CONSIDERATION of the obligations and conditions after written, DO hereby GIVE, GRANT, and DISPONE to the Water Company, incorporated by Act of Parliament (*here give proper title*), and to their successors, an heritable and irredeemable servitude, right, and tolerance over the lands after described, of laying down and maintaining a line of iron main-pipe not exceeding in diameter in and through the lands and estate of X, in the parish of Y and county of Z, from the tank belonging to said company situated at M, to N, in a line delineated on a plan of said lands signed by me as relative hereto, FOR THE PURPOSE AND USE OF CONVEYING WATER from the said tank to the town of O, and places adjacent thereto; WHICH LANDS and estate of X are thus described in the title-deeds thereof—viz., ALL AND WHOLE (*here insert description*); WITH FULL POWER AND LIBERTY to the said Water Company to enter upon the said ground through which the said main-pipe is to be laid, for the purpose of laying down the said pipe, and for executing such repairs thereon as may from time to time be needful, or for any other necessary purpose, provided that before entering on the ground after the pipe is laid down, sufficient notice shall be given to me, or my heirs and successors in said lands, to enable me or my foresaids by ourselves, or others of our appointment, to superintend the operations: AND FURTHER, SPECIALLY PROVIDING and DECLARING that it shall not be competent to, nor in the power of the said Water Company to enlarge the said main-pipe, or to alter the line thereof, without having previously obtained the consent in writing of me or my foresaids: IN CONSIDERATION of which right of servitude the said

Water Company BIND and OBLIGE themselves—(*Primo*) That they shall lay down a lead branch-pipe from the said main-pipe to the mansion-house of , of sufficient dimensions to supply the said mansion-house and offices adjacent with water, and that they shall fully and sufficiently supply the said mansion-house and offices with water free of expense from the time the said main-pipe is laid and completed, and thereafter in all time coming; (*Secundo*) That they shall lay the said main-pipe and branch-pipe at such a depth as shall not interfere with ordinary agricultural operations, and in laying such

Narrative  
clause.  
Dispositive  
clause.

Obligations  
by water  
company—  
To lay  
branch-  
pipe to  
mansion-  
house.

Against  
damage and  
delay.

main-pipe and branch-pipe they shall be careful to do as little damage as possible to the said lands, and shall complete their operations without unnecessary delay; (*Tertio*) That they shall maintain and keep the said main and branch-pipes always in a thorough and complete state of repair; (*Quarto*) That they shall indemnify the tenants or occupiers of the said lands for all loss of crops, and surface or other damage which they have already sustained or may sustain by or through the operations in laying down the said main and branch-pipes, and that they shall make good and repair all damage done to fences, or to drains which may be severed, and repair any other damage, of whatever kind, which may arise through their operations: AND FURTHER, that they shall recompense and make good to me, the said A, and my foresaids, and the tenants or occupiers foresaid, any damage which may arise either to the lands themselves or to the stock and crop thereon from the leakage or bursting of the said main-pipe or branch, or from their operations in the repair thereof, or in any other way, as the said loss and damage shall be ascertained and fixed by two neutral men mutually chosen, and in case of their differing in opinion, by an oversman to be named by them, whose decision shall be final; WHICH RIGHT OF SERVITUDE, under the conditions and obligations above written, I the said A bind and oblige myself and my foresaids to warrant to be good and effectual to the said Water Company at all hands:

Repairs.

Reparation for loss.

Clause of warrandice.

Term of entry.  
Assignment of writs.

Warrandice.  
Clause of registration.

AND I DECLARE the said Water Company's entry to be at and upon the day of : AND FURTHER, I ASSIGN to the said company the writs and evidents of the said lands, but only in so far as necessary to support the said right of servitude; and I oblige myself and my foresaids to make the same furthcoming to them, at their expense, on all necessary occasions (*and, if desired, conform to inventory thereof annexed and subscribed by me as relative hereto*), and that on a receipt and obligation to redeliver the same within a reasonable time and under a suitable penalty: And I the said A grant warrandice; AND WE the said A and the said Water Company, consent to registration for preservation (*add, if appropriate—and execution*).—IN WITNESS WHEREOF, &c.

### 3. Grant of Servitude of Right-of-Way.

I, A, CONSIDERING that I am proprietor of ALL AND WHOLE (*here describe or validly refer to A's subjects*); AND THAT B is proprietor of ALL AND WHOLE (*here describe or validly refer to B's subjects*); AND THAT our respective subjects before described lie contiguous (*or as the case may be*); AND THAT it has been arranged between us that I should grant in favour of the said B and his heirs and assignees the servitude right-of-way after mentioned on the terms and conditions following: THEREFORE IN CONSIDERATION of the sum of £. instantly paid to me by the said B, of which I hereby acknowledge the receipt, I DO HEREBY GIVE, GRANT, AND DISPONE to the said B and his heirs and assignees, but subject always as after mentioned, a servitude right-of-way not exceeding in width                  yards, between the points X and Y leading from the public road across that part of my said property coloured blue, all as shown on the plan annexed and signed as relative hereto: But declaring that these presents are granted with and under the following conditions, namely:—(*First*) The said B and his foresaids shall be bound forthwith to form and thereafter to maintain in good order and repair, at his or their sole expense, a proper footpath along the line of said right-of-way, all to the satisfaction of me or my foresaids. (*Second*) The said B and his foresaids shall, whenever called upon by me or my foresaids, be bound to erect and thereafter to maintain in good order and repair suitable fences on both sides of the said right-of-way, and likewise to erect and also to maintain as aforesaid two suitable gates at the said points X and Y, and also two more gates at such points in the said fences as I or my foresaids may determine, all to the satisfaction of me or my foresaids. (*Third*) The said right-of-way is strictly limited to the personal use of foot-passage by the said B and his foresaids and his or their tenants of the said subjects belonging to him, and their respective families, servants, and dependants, all for the time being, and is granted with reference to the existing nature and circumstances of the said subjects, and shall not be extended to any altered circumstances or be applied in such a way as to increase the burden on my property. (*Fourth*) In the event of the said line of right-of-way between the said points X and Y being at some future date found inconvenient to me or my foresaids in connection with the further development of my said property, I or my foresaids shall

be entitled to alter the line of same, provided I or they supply in lieu thereof a similar and equally suitable footpath—the similarity and suitability of which, failing agreement, shall be referred to two Arbiters in terms of the Arbitration (Scotland) Act, 1894. (*Fifth*) The said right-of-way hereby conferred shall at all times be exercised by the said B, his foresaids and tenants and others aforesaid, in a reasonable manner, and so as to occasion as little inconvenience as possible to me and my successors in the ownership of the said subjects belonging to me: And I consent to registration for preservation.—IN WITNESS WHEREOF, &c.

#### 4. Bond or Deed of Servitude, *non officiendi luminibus*.

Narrative  
clause.

I, A, CONSIDERING that I am proprietor of All and Whole (*here describe or validly refer to A's subjects*); AND THAT B is proprietor of All and Whole (*here describe or validly refer to B's subjects*); AND THAT our respective subjects before described lie contiguous (*or as the case may be*); AND THAT I have agreed, IN CONSIDERATION of the sum of £                    sterling, to be paid to me by the said B, to grant in his favour a bond of servitude in the terms after mentioned, for the preservation of the lights in the                    wall of the tenement erected on his said subjects; AND NOW SEEING that the said B has instantly made payment to me of the foresaid sum of £                    ,

Obligation.

whereof I hereby acknowledge the receipt: THEREFORE I hereby BIND myself, my heirs and successors, proprietors of the subjects first before described, to keep open and unbuilt upon that portion of said subjects presently belonging to me, consisting of the area on the                    side of the foresaid tenement belonging to the said B, and lying betwixt the same and a line drawn parallel thereto, at the distance of                    feet therefrom, as delineated on the plan annexed and subscribed by me as relative hereto, and that for the preservation of the lights of the                    wall of the said tenement, and I and my foresaids are hereby accordingly restrained and prohibited from raising or maintaining any building or erection, whether temporary or permanent, on the said area in all time coming, and from using the foresaid area for any other purpose than as (*here state the purpose for which the area is to be used, such as an access, garden, bleaching-green, &c.*) for, and in connection with my

**Clause  
declaring  
obligation  
real burden.**

## 5. Extinction of Servitudes.

This deed will be written on an *ad valorem* conveyance stamp corresponding to the amount of the consideration money if such is paid, or on an ordinary deed stamp if otherwise. If there are any tenants under existing leases interested in the servitude, they should be made parties to the renunciation, or their rights should be reserved.

Discharges and renunciations of servitudes over ordinary feudal subjects should be recorded, with warrant of registration, in the appropriate Register of Sasines.

## SECTION VI

### COMPLETION OF TITLE

There are two methods by which a vassal can complete his title to an original grant, viz.—(1) By recording the charter or other deed constituting his right with a warrant of registration on his behalf, in the appropriate Register of Sasines; or (2) by expeding a notarial instrument on the deed of grant, and recording it with a similar warrant in the Register of Sasines. Whichever of these methods is adopted, the recording may take place at any time in the life of the vassal, and the date of entry in the minute-book of the register is the date of the infeftment. Section 143 of the Consolidation Act of 1868 permits the recording anew of any conveyance, or the making and recording anew of any instrument, with the original or a new warrant of registration, in the case of there having been an error or defect in the prior infeftment or in the warrant of registration.

Where  
infeftment  
defective,  
deed may be  
recorded of  
new.

#### 1. Warrants of Registration.

(1) Where the deed does not contain a clause of direction, (No. 1 of Schedule (H) of the Act of 1868):—

REGISTER on behalf of A B (*insert designation exactly as given in the deed*) in the Register of the County of C (*or if the writ contains lands in more than one county, in the Registers of the Counties of C, D, E, and F*).

(Signed) A B,

(or) G H,

W.S., Edinburgh, Agent,

(or) J, K & L,

W.S., Edinburgh, Agents.

(2) Where the lands were, prior to the commencement of the Conveyancing Act of 1874 (1st October 1874), held by burgage tenure, writs affecting them are still recorded in the Burgh Register of Sasines, (No. 1 of Schedule (H) of the Act of 1868):—

Lands held  
burbage.

REGISTER on behalf of A B (*insert designation exactly as given in the deed*) in the Register of the Burgh of M (*or if the writ contains*

*lands in more than one burgh*, in the Register of the Burghs of M, N, O, and P).

(Signed) A B,  
(or) G H,  
W.S., Edinburgh, Agent,  
(or) J, K & L,  
W.S., Edinburgh, Agents.

*Note.*—Where the lands lie within the burgh of Paisley, it will be borne in mind that the deed must be recorded in the Register of Bookings.

(3) Should the grantee choose to avail himself of the clause of direction (see page 27) and record only part of the deed, the following is the form (No. 2 of Schedule (F) of the Act of 1868):—

REGISTER the above deed in terms of the clause of Direction therein contained, on behalf of A B (*insert designation*), in the Register of the County of C (*or if the writ contains lands in more than one county, in the Registers of the Counties of C, D, E, and F; or, if the lands be held burgage, in the Register or Registers of the Burgh of M, or Burghs of M, N, O, and P*).

(Signed) A B,  
(or) G H,  
W.S., Edinburgh, Agent,  
(or) J, K & L,  
W.S., Edinburgh, Agents.

(4) Where the original charter is unrecorded, and the same is lodged for recording along with assignment apart or notarial instrument docketed with reference thereto (No. 2 of Schedule (H) of the Act of 1868), the following is the form :—

REGISTER on behalf of A B (*insert designation*) in the Register of the County of \_\_\_\_\_ along with the Assignment [*or Notarial Instrument*] docketed with reference hereto.

(Signed) A B,  
(or) G H,  
W.S., Edinburgh, Agent,  
(or) J, K & L,  
W.S., Edinburgh, Agents.

**For form of docquet on assignment or notarial instrument, see p. 45.  
The warrant on the assignment or notarial instrument is in the ordinary form.**

## (5) Registration for preservation and execution.

The above warrants of registration refer exclusively to registration for publication in the Register of Sasines, which is the modern equivalent for infetment. In the event of registration of a deed being required or desired for the further purpose of preservation, or of preservation and execution, the warrant takes the following form (No. 3 of Schedule (A) of Land Registers (Scotland) Act of 1868):—

REGISTER on behalf of A B (*insert designation*), for preservation (*or* preservation and execution), as well as for publication, in the Register of the County of C (*or* in the Registers of the Counties of C, D, E, and F).

(Signed) A B,

(*or*) G H,

W.S., Edinburgh, Agent,

(*or*) J, K & L,

W.S., Edinburgh, Agents.

Extracts of certain writs may be recorded.

By section 6 of the Registered Writs Execution Act (40 & 41 Vict. c. 40), it is now permitted to record, with warrant of registration for preservation and execution, the extract of any writ which contains in itself a procuratory or clause of registration for preservation and execution, but which shall have been registered in the Register of Sasines for preservation only, such further registration being effected by memorandum and not at length.

Not necessary to insert designation or character of parties in warrants of registration.

It merely remains to be added on the subject of warrants generally, that though it is a common practice to specify in the warrant the character in which the parties on whose behalf the writ is to be recorded take infetment, the Act itself requires nothing more than the names and designations, leaving the character and extent of the right to be gathered from the terms of the writ. Accordingly, the general, and we believe correct, practice is to omit from the warrant any peculiarity in the destination or in the character of the parties, and simply to add to the names and designations, the words "for their respective rights and interests," or in the case of trustees, the words "as trustees within (*or* above) mentioned," or otherwise as the case may be.

(6) Registration *propriis manibus*. By which a husband can infet his wife *propriis manibus* by recording a conveyance granted in favour of himself, with a warrant in favour of himself and of his wife, *to be signed by himself, and not by an agent* (section 15, Titles to Land Consolidation Act, 1868, Schedule H (3)).

Warrant of Registration or infetment *propriis manibus*.

REGISTER on behalf of A B (*insert designation*), in the Register of the County of C (*or, if the writ contains lands in more than one county, in the Registers of the Counties of C, D, E, and F; or, if the lands be held burgage, in the Register of the Burgh of M, or in*

the Registers of the Burghs of M, N, O, and P); and also *ex propriis manibus* on behalf of L, wife of the said A B, in liferent (*or as the case may be*).  
(Signed) A B.

## 2. Notarial Instruments.

Where the deed, upon which any notarial instrument is expedé, contains a clause of direction, the notarial instrument must contain the whole of what is directed to be recorded (section 12 of Consolidation Act of 1868).

It is to be observed as a general rule in preparing notarial instruments, that in narrating the deed which contains the warrant, the whole dispositive clause is to be taken into the instrument; for it is now in that clause alone that burdens, reservations, and peculiarities of the grant are introduced; and their omission from the instrument may invalidate the infestment. (See 31 & 32 Vict. c. 101, s. 146.)

All notarial instruments must have endorsed on them a warrant of registration before being recorded.

Infestment by means of a notarial instrument, in so far as concerns deeds under this title, is to be recommended only in the case of a deed conveying separate lands or separate interests in the same lands, in the whole of which it is not desired that infestment should be at once taken.

### (1.) NOTARIAL INSTRUMENT, ON FEU-CHARTER, IN FAVOUR OF THE ORIGINAL VASSAL (*see* Schedule J of 1868 Act).

At there was on behalf of B presented to me, Notary-Public subscribing, a Feu-Charter granted by A, and dated (*insert the date*), by which Feu-Charter the said A sold and in feu-farm disposed to and in favour of the said B and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*insert the description of the lands conveyed, and any reservations, real burdens, conditions, restrictions, and qualifications, with the date of entry, and the tenendas and reddendo clauses, all as in the Feu-Charter*): Whereupon this instrument is taken in the hands of L, Notary-Public, Edinburgh, in the terms of the "Titles to Land Consolidation (Scotland) Act, 1868:" IN WITNESS WHEREOF these presents, written on this and the preceding pages, by G, my clerk, are subscribed by me before these witnesses, the said G and J, also my clerk.

G, witness.

(Signed) L, Notary-Public.

J, witness.

Testing  
clause of  
notarial in-  
struments.

The testing clause of notarial instruments differs from that in ordinary deeds by the *absence of* (1) *the place of signing* (that being set forth at the commencement of the instrument); and (2) *of a date*—the date of registration being taken as the date of the instrument and infetment.

The notary subscribes each page of the instrument, adding the words Notary-Public to his subscription on the last page, and either these words or the initial letters N.-P. on the prior pages. Above his subscription on the last page the notary usually puts his motto, such as "Veritas," "Fides," or the like; but as the statutory forms make no mention of the notary's motto its addition is not material.

(2.) NOTARIAL INSTRUMENT UPON A FEU-CHARTER, THE HOLDER OF WHICH HAS A RIGHT BY ASSIGNATION OR DECREE OF GENERAL SERVICE (*see* Schedule J of the 1868 Act, and section 31 of the 1874 Act).

AT there was on behalf of C (*full name and designation*) presented to me, Notary-Public subscribing, a Feu-Charter granted by A (*full name and designation*), and dated (*insert the date*), by which Feu-Charter the said A sold and in feu-farm disposed to and in favour of B (*full name and designation of original vassal*) and his heirs and assignees whomsoever heritably and irredeemably, ALL AND WHOLE (*insert the description of the lands conveyed, and any reservations, real burdens, conditions, restrictions, and qualifications, with the date of entry and the tenendas and reddendo clauses, all as in the Feu-Charter*): AS ALSO there was presented to me an Assignment granted by the said B, and dated (*insert date*), by which assignment the said B assigned to and in favour of the said C and his heirs and assignees the foresaid Feu-Charter, with entry at the term of (*or, if the person in whose behalf the Notarial Instrument is expedite be an heir—*AS ALSO there was presented to me an Extract Decree of General Service, obtained before the Sheriff of , dated , and recorded in Chancery and extracted the day of , whereby the said C was served and decerned nearest and lawful heir in general to the said B, now deceased, his father): WHEREUPON, &c. (*as in the preceding example*).

(3.) NOTARIAL INSTRUMENT IN FAVOUR OF THE TESTAMENTARY TRUSTEES OF ORIGINAL VASSAL, FOLLOWING UPON AN UNRECORDED CHARTER, TO BE RECORDED ALONG WITH THE CHARTER (*see* Schedule N of 1868 Act).

AT there was on behalf of C and D, Trustees nominated and appointed by and acting under the Trust-Dis-

position and Settlement after mentioned of the now deceased B, PRESENTED TO ME, Notary-Public, subscribing, a Feu-Charter granted by A, and dated , by which Feu-Charter the said A sold, and in feu-farm disposed in favour of the said B and his heirs and assignees whomsoever heritably and irredeemably, ALL AND WHOLE the lands of X, as described in the said Feu-Charter; and which Feu-Charter is to be recorded along with this Instrument: As ALSO there was presented to me an Extract Registered Trust-Disposition and Settlement granted by the said B, dated the day of , and recorded in the Books of Council and Session the day of , all in the year 19 ; by which Trust-Disposition and Settlement the said B gave, granted, and disposed to the said C and D and the survivor of them, as Trustees and Trustee for the purposes therein mentioned [all lands, tenements, and other heritages and generally the whole estate, heritable or moveable, real or personal, then belonging or which might belong to him at the time of his death, *or as the case may be*]: WHEREUPON, &c. (*as in example No. 1*).

This notarial instrument must be docqueted, in or as nearly as may be in, the form following:—

“Docqueted with reference to Warrant of Registration on behalf  
“of C and D written on the said Feu-Charter.”

(Signed) G H,

W.S., Edinburgh, Agent,

(or) J, K & L,

W.S., Edinburgh, Agents.

For form of warrant of registration on feu-charter, see p. 41, example (4).

The warrant on the notarial instrument will be in the form of example (1) p. 40; see also instructional note on p. 41.

## TITLE II

### DEEDS OF ALIENATION

#### SECTION I

#### PRELIMINARY DEEDS

The simplest form of entering into a contract for the purchase of heritable property is by *letters or missives* passing between the seller and purchaser or their respective agents.

##### 1. Missives of Sale.

Of these we give two examples, the first being expressed in the briefest form, while the second specifies the details which are generally attended to in such bargains.

##### *FIRST FORM.*

##### OFFER.

To A (*designation and address*).

(*Place and date.*)

Sir,—On behalf of B (*full name and designation*), I hereby offer to purchase from you the lands and estate of X (*or the westmost House on the third flat No.      Street, Edinburgh, or as the case may be*), at the price of £      sterling, with entry at Whitsunday next, when the price will be payable.

This offer shall be binding for      days from this date.

I am, your obedient servant,

(*Signed*)      C.

##### ACCEPTANCE.

To C (*designation and address*).

(*Place and date.*)

Sir,—On behalf of A (*full name and designation*), I accept your offer of      inst., of which a copy is appended hereto.

I am, your obedient servant,

(*Signed*)      D.

## SECOND FORM.

## OFFER.

To A (*designation and address*).*(Place and date.)*

Sir,—I hereby offer to purchase from you (*here specify or describe the subjects*). The price shall be £            sterling, payable at            , and bearing interest at            per cent. from and after the term of            next, which shall be the term of my entry as purchaser, you relieving me of any casualty which may be due at the date of entry.

On payment of the price you shall grant and deliver to me at mutual expense a valid disposition, and along therewith you shall deliver a valid legal progress of titles and a search of incumbrances for            years, showing the records to be clear of all burdens.

This offer shall be binding on me for            days from and after this date.

I am, Sir, your obedient servant,

*(Signed)*            C.

Where any unusual arrangement is intended with respect to the division of burdens or payment of duties, &c., the offer will express this. In the event of the subject being a house, it is well in all cases to express distinctly what the offer is intended to cover in the way of fixtures, fittings, blinds, grates, or any other items regarding which there might be any doubt. The acceptance, as before shown, is usually annexed to a copy of the offer; in which case it will be in the form of a letter from the owner or seller to the offerer as follows:—

To C (*designation and address*).*(Place and date.)**(Name of Subject.)*

Sir,—I hereby accept your offer of            inst., of which a copy is prefixed.

I am, Sir, your obedient servant,

*(Signed)*            A.

The offer and acceptance in order to be probative must either be holograph or tested in the usual way, and the missives should be impressed with an agreement stamp.

If the subject sold be of great value, or sold under numerous conditions, or if for any reason the completion of the conveyance cannot be immediately effected, the arrangement between parties is frequently expressed in an *agreement* or *minute of sale*, in which the conditions of the

sale are more fully detailed than could conveniently be done by missive letters. A simple form of a minute of sale is as follows:—

## 2. Minute of Sale.

MINUTE OF SALE between A (*name and designation*), heritable proprietor of the subjects after mentioned (*or as the case may be*), of the first part, hereinafter called the First Party, and B (*name and designation*), of the second part, hereinafter called the Second Party.

THE first party hereby agrees to sell to the second party, and the second party hereby agrees to purchase, All and Whole (*here describe or validly refer to the subjects*), and that upon the following terms:—

1. The price shall be £                      sterling, payable by the second party at                      next, which will be the term of his entry to the subjects, with interest at                      per cent. per annum till paid.

2. On payment of the price, the first party shall execute and deliver to the second party a valid Disposition, to be executed at mutual expense, containing all usual and necessary clauses, and particularly a clause of absolute warrandice under exception of feu-rights and current leases, missives, or other rights of possession of the tenants and possessors of said subjects, together with a valid legal title to said subjects, and a search of incumbrances for the period of forty years preceding the foresaid term of entry, and including the above-mentioned Disposition, provided the same shall be recorded within a week from the date of delivery, and he shall purge the record of all incumbrances appearing on the search, or which may be found to affect the said subjects, or the successive proprietors thereof during said period.

3. The second party shall have right to the rents and duties of the foresaid subjects, and shall be liable in payment of the feu-duties, casualties, and public and parochial burdens for the possession following the term of entry; the first party relieving him of any casualties which may be exigible prior to said term.

4. Should any questions arise between the parties regarding the true intent and meaning of these presents, or the adjustment of the Disposition to follow hereon, the same are hereby referred to C (*name and designation*), whom failing to D (*name and designation*), whose awards, whether interim or final, shall be binding upon both

parties; and both parties consent to registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

Any specialties connected with the carrying through of the sale may appropriately be made the subject of one of the heads of the minute of sale, such as, for instance :—

1. The sale being contingent on an Act of Parliament.
2. The consent of the Court of Session being required.
3. Division of burdens or feu-duty.
4. Allocation of a portion of burdens on subjects of sale and corresponding deduction from price.
5. Postponement of burdens.
6. Consent of liferenter or creditor in a family provision, or retention by purchaser of capital sum till expiry of liferent, &c.
7. Provision that if any specified condition of sale is not implemented, the bargain may be held as void without any claim of damages for non-implementation.

A suitable clause to meet the case of a liferent is as follows :—

In respect that E (*name and designation*), the mother of the said A (*or as the case may be*), has a liferent right secured by infeftment, for an annuity of £                      yearly, payable out of said lands, it is hereby agreed that until the death of the said E, or until the said A or his foresaids shall procure a renunciation of said liferent infeftment, the said B or his successors in the said lands shall be entitled to retain £                      as a capital sum to meet the said liferent annuity, and which capital sum so to be retained shall be payable to the said A or his successors at the first term of Whitsunday or Martinmas which shall happen three months after the death of the said E, or renunciation of the said liferent in manner above mentioned, with a fifth part more of penalty in case of failure, and the legal interest of the said sum, from and after the term or date up to which the said liferent annuity shall have been paid, during the not-payment, the said B and his foresaids being always liable to pay the said annuity so long as the same shall subsist as a burden on the said lands; and which capital sum of £                      , with the interest thereof and penalty corresponding thereto, shall be declared in the Disposition to follow hereon to be a real burden upon and affecting the said subjects, and the said real burden shall be inserted or validly referred to in any Notarial or other Instrument to follow on the said Disposition, and in all subsequent transmissions and conveyances of, or other writs affecting, the said subjects until full payment of the said sums; otherwise such Instrument, transmission, conveyance, or other writ, shall be void and null.

Power to retain portion of price to meet liferent.

### 3. Articles of Roup.

When lands are to be exposed to sale by public roup, the conditions of sale are regulated by articles of roup signed by the exposor. These may be in the following terms:—

ARTICLES and CONDITIONS of ROUP and SALE of All and Whole  
*(here describe or validly refer to the subjects to be sold, and refer to any reservation, real burdens, and conditions exactly as they are to be contained in the Disposition to the purchaser);* WHICH SUBJECTS are to be exposed to sale by Public Roup by A *(name and designation)* upon the Articles and Conditions under written, within *(insert place of sale)*, on the day of , at o'clock noon, or at such other time and place, or upon such other Articles and Conditions, as shall be appointed by any Minute or Minutes to be annexed hereto.

*(First)* The foresaid subjects are to be exposed to sale by roup in one lot at the upset price of £ sterling, *(or in such lots and at such upset prices as shall be specified in any minutes to be annexed hereto)*, and the highest or only offerer shall be preferred to the purchase.

*(Second)* Each offer after the first shall exceed the immediately preceding offer in at least the sum of £ ; and each offerer shall subscribe his offer, and shall become bound and obliged for the sum offered by him, whether his offer is subscribed or not, upon the conditions expressed in these Articles, or any minutes to be annexed hereto.

*(Third)* The purchaser shall have right to the rents applicable to the possession from and after the term of , which is hereby declared to be the term of his entry thereto; and the price offered shall be payable to the exposor, at the said term, with interest at £ per cent. thereafter.

*(Fourth)* The purchaser shall be bound, if required, within ten days after the roup, to deposit the amount of the price *(or a proportion of it, to be here stated)* in the Bank of *(specify bank, and where situated)*, in the joint names of the exposor and purchaser, and to be made furthcoming to the exposor at the term before specified.

(*Fifth*) In case the purchaser shall fail after being required so to deposit the price (*or proportion thereof if part only to be paid*), it shall be in the power of the exposor to declare that the person so failing shall not only forfeit the purchase, but shall also be liable in one-fifth part of the price offered by him as damages; and in case the exposor shall declare the person so failing to have forfeited the purchase—which he may do by registered letter put into the post-office and addressed to such person—it shall be optional to him either to hold the said subjects himself, or of new to expose the same to sale, or to declare the same to belong to the immediately preceding offerer; and in case the exposor shall so declare and shall intimate such failure to deposit the price, and consequent forfeiture of such purchase, to the immediately preceding offerer, with a requisition for the fulfilment of his offer within ten days after such failure, then such immediately preceding offerer shall be deemed the purchaser, and shall be obliged, within ten days after such intimation and requisition, to deposit the price (*or portion thereof as before*) in like manner and under the like penalty and optional forfeiture as in reference to the original purchase; and so forth through the whole course of offerers until these Articles be fulfilled.

(*Sixth*) Upon payment of the price, with interest and penalty if incurred, the exposor obliges himself to deliver (*or exhibit*) Certificates of Searches for incumbrances affecting the foresaid subjects, and the successive proprietors thereof, for ~~forty~~<sup>20</sup> years prior to the foresaid term of entry, to purge the same of all incumbrances appearing on the said Searches as affecting the same, and to execute and deliver a valid Disposition to the purchaser and his heirs or assignees under the several reservations, real burdens, conditions, and declarations (*or as the case may be*) specified or referred to in the title-deeds of the said subjects, which Disposition shall contain a clause of entry as at (*date as in article third*), and all other usual and necessary clauses, and particularly a clause of absolute warrandice (*and if appropriate, the following clause*—but excepting therefrom subsisting feu-rights, and also the current leases or other rights of possession of the tenants and occupiers of the said subjects), and declaring that the purchaser shall be bound to relieve the exposor of all claims in any way competent to tenants in virtue of their respective tacks, for improvements, meliorations, or otherwise.

(*Seventh*) The title-deeds shall be delivered to the purchaser along

with the Disposition, and conform to the Inventory annexed and subscribed as relative hereto. (In case the said subject shall be sold in separate lots, such of the title-deeds thereof as contain lands included in only one lot shall be delivered to the purchaser of such lot; and such of the title-deeds as contain lands included in more than one lot, shall be delivered to the purchaser of the lot for which the largest price shall be paid, under an obligation to make the same to the extent of a legal progress furthcoming to the purchaser of any other lot which may be contained therein, on all necessary occasions, on a receipt and obligation for redelivery thereof within a reasonable time, and under a suitable penalty; and in case any part of the said subjects shall remain unsold, the title-deeds of such part shall be retained by the exposor under the like obligation to make the same furthcoming, as aforesaid, to the purchaser of such part of the said subjects contained therein as may have been sold.) The offerers and purchaser shall be understood to have satisfied themselves as to the validity and sufficiency of the said title-deeds, and of the right of the exposor, and shall not be entitled to object to the same after the sale upon any ground whatever, nor to require that the exposor shall pay any casualty or composition to the superior, nor that any other titles shall be made up at the expense of the exposor.

(*Eighth*) Offerers are understood to have satisfied themselves before the roup as to the rental, value, and extent of the foresaid subjects, and as to the amount of the duties or payments, and public, parochial, and local burdens or taxes affecting the same, and as to all other burdens and particulars; and they shall not be entitled to demand any deduction from the price offered on account of any misunderstanding, error, or alleged deficiency in rental, value, or extent, or under-statement of the said duties, payments, or burdens, or any defect of the titles, or insufficiency of the right in the exposor's person, or on any other account whatever.

(*Ninth*) The expense of the Disposition to be granted in terms hereof (including the stamp-duty) shall be mutual.

(*Tenth*) Questions between the exposor and any purchaser or offerer concerning the import of these Articles, or the implement thereof, are hereby submitted to the final decision of B (*name and designation*), whom failing of C (*name and designation*), whom failing of an arbiter to be named by the Sheriff of the County of (*state county where subjects*

*are situated*) on application to him for that purpose by any party interested, as sole arbiter.

(*Eleventh*) , whom failing , shall be Judge of the Roup, with power to determine whatever questions and differences may occur at the roup betwixt the exposor and offerers, or among the offerers themselves, in relation to the foresaid roup, to prefer the highest offerers, and also to adjourn the roup from time to time.

(*Lastly*) The exposor and the offerers oblige themselves mutually to implement the foresaid Articles to each other, under the penalty of £ sterling, to be paid by the party failing to the party performing or willing to perform, over and above performance: (AND they consent to the registration of these presents, and of the Minutes of Roup, enactments, prorogations of the before-written submission, decret or decreets-arbitral, and other proceedings to follow hereon, for preservation and execution.) (a)—IN WITNESS WHEREOF, &c.

In case, as very often happens, the lots are arranged before the day of roup (contingently on no sale of the whole lands in one lot), article first will bear that the lands are to be exposed, &c.,

in one lot, at the upset price of £ ; or, if not sold in one lot, then in separate lots, as follows, viz:—Lot First, consisting of (*here describe the lands*), and that at the upset price of £ : Lot Second, consisting of (*here describe the lands*), and that at the upset price of £ .

Where lands to be exposed in parcels if not sold in one lot.

And so on, until the whole lands are gone over. Then there will follow:—

Or the said subjects shall be exposed in such other lots or at such other upset prices as shall be specified, &c.,

as in the foregoing style. Sometimes it is conditioned, in the case of intended exposure in lots, that unless lot first shall be sold the other lots shall not be exposed. The clause to that effect should be inserted in article first, after specification of the lots; and in the earlier part of the article, after the words "in separate lots as follows," there should be introduced—

But subject always to the provision and declaration after written.

(a) Where consent to registration is inserted as above, the articles of roup are held liable to a deed stamp of 10s. In practice this clause is frequently omitted, and the articles are written on plain paper, upon which an agreement stamp of 6d. is impressed should a sale be effected. It will further be kept in view that the time for after stamping is limited.

If a search of incumbrances is not to be furnished, the obligation to furnish this will not be inserted in article sixth, which may conclude in the following terms:—

And it is hereby declared that the exposor shall not be bound to exhibit or deliver Searches of incumbrances, but in the event of the purchaser making a Search and finding any incumbrances affecting the said subjects, and intimating the same to the exposor within three months (*or such other period as may be deemed sufficient*) after the term of the purchaser's entry, the exposor shall be bound not only to purge the said incumbrances, but also to pay the expense of the said Search.

On the subjects being exposed to sale in terms of the foregoing articles, a docquet is appended containing the offers and minute of preference and sale, or a minute of adjournment, according to the result of the exposure. In the event of a sale being effected, this appears from the—

#### 4. Offers and Minute of Preference and Enactment of the Purchaser.

AT \_\_\_\_\_, and within (*place of exposure*) there, on the \_\_\_\_\_ day of \_\_\_\_\_, the subjects before described being exposed to public roup and sale at the price of £ \_\_\_\_\_, in presence of \_\_\_\_\_, Judge of the Roup, in terms of the foregoing Articles, COMPEARED the following offerers, who made the several offers appended to their names, viz.:—

A B ( <i>designation</i> )	.	.	.	.	£
C D	"	.	.	.	£
E F	"	.	.	.	£
Z	"	.	.	.	£

AND the said Z being the last and highest offerer for the said subjects (*if the offerer is merely an agent, add—*and he having declared that he made the said offer on behalf of Y—*name and designation*), the Judge of the Roup hereby prefers him (*or the said Y*) to the purchase: THEREFORE the said Z enacts himself (*or the said Y*) accordingly, and BINDS AND OBLIGES himself (*or the said Y*), his heirs and successors, to implement the whole of the foregoing Articles and Conditions so far as incumbent on the purchaser, in every respect, under the penalty therein specified: (And he consents to

the registration of this enactment and obligation along with the said Articles and Conditions of Sale, conform to the clause of registration therein contained).<sup>(a)</sup>—IN WITNESS WHEREOF, these presents, written upon this and the preceding pages (*adding, if this be the case*—of stamped paper) by G (*designation*), clerk to L, Writer to the Signet, Edinburgh, are subscribed by the said , Judge of the Roup, and by the said (*specifying the offerers, and if they are acting on behalf of others, mentioning this*), at Edinburgh, &c. (*complete testing clause in usual form*).

If a sale be not effected, the roup is adjourned.

### 5. Form of an Adjournment of Roup.

AT and within (*place of exposure*), on the day of , the subjects before described being exposed to public roup and sale at the price of £ in presence of , Judge of the Roup, in terms of the foregoing Articles, and no person appearing to offer for the same, the said Judge hereby adjourns the sale to the day of .

(*Signed by Judge of the Roup*).

This does not require to be witnessed.

Where the lands are to be exposed again after an adjournment, there will be appended to the articles of roup and minute of adjournment a minute of re-exposure, which may be in the following terms:—

### 6. Minute of Re-Exposure.

By virtue and in terms of the foregoing Articles and Conditions of Roup and Sale and Minute of Adjournment hereinbefore written, the subjects which were exposed to sale under the said Articles and Conditions are again to be exposed to public roup and sale within on the day of at , and that upon the said Articles and Conditions of Roup and Sale, and in the manner thereby provided (*or if any alteration this should be stated*), at the reduced upset price of £ sterling.—IN WITNESS WHEREOF, &c.

The preceding form of an adjournment, it will be observed, applies only to the adjournment of the sale of the whole estate; but in the event

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<sup>(a)</sup> See note, p. 53.

of its being exposed in lots, and of one or more of these being sold, the form of adjournment will be varied accordingly.

The same remark applies to the form of the offers.

### 7. Articles of Roup *under Powers in a Bond and Disposition in Security.*

Where the subjects are to be exposed to public sale under the powers contained in a bond and disposition in security, some variations will require to be made on the form of articles and conditions given above.

The inductive clause, after describing or referring to the subjects and burdens (if any), will proceed :—

WHICH subjects are to be exposed to sale by public roup by A (*name and designation*), in virtue of the powers contained in a Bond and Disposition in Security dated \_\_\_\_\_ and recorded (*specify Register of Sasines and date of recording*), for the sum of £ \_\_\_\_\_ sterling, granted by B (*name and designation*) in favour of the said A (*or if A be not the original creditor, name and design the grantee in the usual manner, and add—to which Bond and Disposition in Security the said A has now right by various transmissions*) upon the Articles and Conditions under written (&c., *as before*).

No alteration will be required on articles first to third inclusive, but the following clause will be inserted at the end of article fourth :—

DECLARING that the exposor, upon receipt of the price, shall be bound to hold count and reckoning therefor with the said B (*the debtor*) or his representatives, and the postponed creditors, if any such there be, or with any other party having interest in the same, and to consign in the said bank (*which in this case will be the one specified in the Bond*), in the joint names of the exposor and purchaser, for behoof of the party or parties having best right thereto, the surplus which may remain, if any, after paying the principal sum contained in the said Bond, with the interest due thereon and penalties if incurred, and expenses in reference to the possession of said subjects, including the expense of insurance, repairs, and management, and whole expenses attending the sale, and after paying all previous incumbrances, if any, and expenses of discharging the same. But if there be no such surplus, the purchaser shall

be entitled, at his sole expense, to have a certificate of no surplus prepared and recorded by the exposers's agents.

Article fifth is in usual form.

Article sixth is as follows:—

Upon payment of the price, with interest and penalty if incurred, the exposers obliges himself to grant and deliver a valid Disposition to the purchaser and his heirs or assignees, under the several reservations, real burdens, conditions, and declarations (*or as the case may be*) specified or referred to in the title-deeds of the said subjects; which Disposition shall contain a clause of entry as at (*date as in article third*), and all other usual and necessary clauses, and particularly a clause of warrandice on the part of the exposers from his own proper facts and deeds only, and an Assignment of the warrandice in the Bond: And the exposers shall further disburden the subjects of the real security constituted by the Bond without prejudice thereto in all other respects; or, in the option of the purchaser, the exposers shall deliver to him at his expense an Assignment of said Bond to the extent of the price paid, reserving the personal obligations therein contained for the balance thereby due, and under the declaration that said Assignment shall be accepted by the purchaser as a collateral security merely, and that he shall not use the personal obligations assigned to him against the said B (*the debtor*) and his foresaids, unless the subjects shall be evicted from the purchaser or his foresaids on account of any act or deed of the said B or his foresaids, or any defect in their title to said subjects; which Assignment the exposers shall be bound to warrant from his own proper facts and deeds only: And the exposers shall also deliver (*or exhibit*) to the purchaser official Searches of incumbrances over the said subjects for forty years prior to the date of the sale, and if any incumbrances preferable to said Bond and Disposition in Security appear thereon, he shall be bound in the first place to apply the price to be received in extinction of such incumbrances.

The following words may be added at the end of the seventh article, which relates to titles:—

DECLARING that the offerers and purchasers shall be held to have satisfied themselves of the right of the exposers to bring the said subjects to sale, and of the accuracy and sufficiency of the said

Bond, whole notices, advertisements, and preliminary proceedings required by statute, or otherwise, in the case of sale under the power to that effect contained in a heritable security, and shall not be entitled to object to the same, or to withhold payment of the price on any ground or pretext whatever; the exposor's right being taken *tantum et tale*: DECLARING further, that the offerers by subscribing their offers accede to and become bound to adhere to and fulfil this condition, and renounce and depart from any right to object to or challenge any of the titles, rights, and proceedings, or the right of the exposor to sell the said subjects.

Directions how to proceed with the view to a sale of heritable subjects under the powers contained in a bond and disposition in security are given in section 119 *et seq.* of the Consolidation Act of 1868, and the relative schedule of intimation, requisition, and protest is appended to that Act (Schedule FF. No. 2). See also the 1874 Act, s. 48, and the 1894 Act, ss. 14 and 16.

### 8. Articles of Roup by Trustee on a Sequestrated Estate.

Where the exposure is made by a trustee on a bankrupt estate of which the subjects are part, the inductive clause will bear that it is to be made by the trustee with consent of the commissioners, who will also sign the articles. The articles themselves are in ordinary form down to article sixth, which is in these terms:—

UPON payment of the price, with interest and penalty if incurred, the exposor obliges himself to deliver (*or* exhibit) Certificates of Searches of incumbrances affecting the foresaid subjects for forty years prior to the date of the sale, and to the extent of said price to purge the same of all preferable incumbrances appearing on said Searches, and the said price shall be consigned by the exposor, with consent of all concerned, in the said bank, and shall be applied in manner after expressed, but the purchaser shall have no concern with the application of said price nor with the provisions herein contained: AND the exposor obliges himself to grant and deliver, either with or without the consent of one or more of the heritable creditors having preferable claims against said subjects, a valid Disposition to the purchaser, and his heirs or assignees, in so far as he as trustee foresaid is authorised to grant the same by the Bankruptcy (Scotland) Act, 1856, under the several reservations, real burdens, conditions, and declarations (*or as the case may be*) specified or referred to in the title-deeds of the said subjects; which

Disposition shall contain a clause of entry as at (*date as in article third*), and all other usual and necessary clauses, and particularly a clause binding the exposor as trustee foresaid, and his successors in office, to warrant the said Disposition from fact and deed, and binding the bankrupt and his representatives in absolute warrandice: AND it is hereby declared that the price so to be received and consigned by the exposor as aforesaid shall be applied in payment of the debts, interest, and expenses of said heritable creditors having preferable claims over the said lands, and that the exposor shall be entitled to adopt the procedure prescribed by the Bankruptcy (Scotland) Act, 1856, in regard to such preferable claims, and that he shall apply the balance of the price, if any, in terms of the said Act.

The seventh clause should conclude as follows:—

DECLARING further that the offerers and purchaser shall be held to have satisfied themselves of the right of the exposor to bring the said subjects to sale, and shall not be entitled to object to the same, or to withhold payment of the price on any ground whatever, the exposor's right being taken *tantum et tale*: AND that the offerers by subscribing their respective offers accede to and become bound to adhere to and fulfil this condition, and renounce and depart from any right to object to or challenge any of the titles, rights, or proceedings or the right of the exposor to sell the said subjects.

In other respects the usual form is adopted *mutatis mutandis*.

## 9. Articles of Roup of Ruinous Building.

In the case of a ruinous building belonging to two or more owners, a petition may be presented to the Sheriff under the Burgh Police (Scotland) Act, 1892, or to the Dean of Guild Court at common law, for valuation of the building and of the proportions belonging to the several proprietors, giving each the option to buy or to sell to the others their respective portions, and failing advantage being taken of said option, to proceed to sale of the subjects and division of the price.

ARTICLES AND CONDITIONS OF ROUP AND SALE OF ALL AND WHOLE the subjects situated                      within the Burgh of                      , all as delineated on                      plans which are signed as relative hereto, and which plans have been produced in the proceedings under which

the Warrant hereinafter referred to has been obtained: Together with the whole rights and privileges, and with and under the whole conditions, restrictions, and provisions under which the proprietors or possessors of the said subjects hold or may hold the same, which subjects are to be exposed to public roup and sale by \_\_\_\_\_, Procurator-Fiscal of the Dean of Guild Court of the Burgh of \_\_\_\_\_, for the public interest, in virtue of the Warrant of the (Lord) Dean of Guild, dated \_\_\_\_\_, granted under (*refer to Municipal Act*), in a Petition presented to the said Dean of Guild Court by the said \_\_\_\_\_, against \_\_\_\_\_ and other respondents, and that within \_\_\_\_\_ Rooms, No. \_\_\_\_\_ Street, \_\_\_\_\_, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock noon, after due notice by advertisement in terms of said warrant, upon the following Articles and Conditions, or at such other time and place, and on such other Articles as said (Lord) Dean of Guild may appoint.

No alteration will be required on articles first and second.

Article third may be omitted.

Article fourth will run :—

The purchaser shall be bound within ten days after the roup to deposit the amount of the price in the \_\_\_\_\_ Bank (*specify bank and where situated*), upon a receipt and voucher subject to the control or orders of the Dean of Guild Court, otherwise the sale shall be null and void.

(*Fifth*) Upon such a deposit being so made, the exposor binds himself to procure a decree or warrant by the said (Lord) Dean of Guild declaring the purchase duly completed, and authorising immediate possession of the subjects hereby exposed to be given to the purchaser thereof, which decree or warrant is by the said Act declared, upon being registered in the proper Register of Sasines, to be a valid and sufficient title to such purchaser. And it is hereby declared that the purchaser shall not be entitled to require the exposor to produce any other or further title than the said decree or warrant, the expense of recording which shall be paid by the purchaser.

(*Sixth*) No Certificates of Searches for incumbrances shall be exhibited or delivered, and no warrandice expressed or implied against any incumbrances, burdens, annual duties or payments, leases, or

other rights vested in any party having any rights of property, or possession in or connected with said subjects.

(*Seventh*) Offerers are understood to have satisfied themselves before the roup as to the value and extent of the foresaid subjects, and as to any burdens, public, parochial, or otherwise, affecting the same, and as to all other particulars; and they shall not be entitled to demand any deduction from the price offered on account of any misunderstanding, error, or alleged deficiency in value, or extent, or situation, or under statement of said burdens, or any defect of the titles, or insufficiency of the right in the exposor's person, or on any other account whatever.

(*Eighth*) The auctioneer's fee shall be paid equally by the exposor and the purchaser.

(*Lastly*) \_\_\_\_\_, auctioneer, \_\_\_\_\_, whom failing \_\_\_\_\_, shall be Judge of the Roup, with power to determine whatever questions or differences may occur at the roup between exposor and offerers, or among the offerers themselves in relation to the foresaid roup, and also to adjourn the said roup from time to time, and to prefer the highest offerer in manner above specified, and the exposor by subscribing these articles, and the purchaser by subscribing his offer, hereby consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF.

The foregoing examples of articles of roup can be modified in accordance with the circumstances. Thus the subjects of sale may be burdened with a liferent infektment in favour of the seller's wife, which is to remain secured on the property in the event of her survivance, in which case there may be an article declaring that the purchaser shall be entitled to retain a capital sum to answer the liferent till the death or renunciation of the liferenter, such capital sum being declared a real burden on the lands. An example of such a clause applicable to a minute of sale has been given above (p. 49). Or the estate may be sold by a commissioner on behalf of the proprietor, or by trustees, which will occasion an alteration according to the nature of the trust, &c. The roup may also be of ground at an upset feu-duty, or ground-annual of so much per foot of frontage or square measurement of area, in which case the property will probably be described by a plan, and the conditions of feu, &c., detailed in a model charter or contract referred to in the articles. The following form may be used:—

## 10. Articles of Roup and Feu.

ARTICLES and Conditions of Roup and Feu of ALL AND WHOLE  
(*here describe the subjects to be feued by boundaries and plan, or otherwise*

*as may be required*), which subjects are to be exposed to feu by public roup in lots conform to said plan, by \_\_\_\_\_, upon the Articles and Conditions under written, within \_\_\_\_\_, on the day of \_\_\_\_\_ at \_\_\_\_\_, o'clock, or at such other time or place, or upon such other Articles and Conditions, as shall be appointed by any Minute or Minutes to be annexed hereto:—

(*First*) The said subjects are to be exposed to feu by roup in such lots, and in such order, as the exposers may choose, at the upset price or annual feu-duty of \_\_\_\_\_ per lineal foot of frontage to the said streets of \_\_\_\_\_ (*or* \_\_\_\_\_ shillings per square yard, *or* pounds per acre, *or otherwise as the case may be*), or at such other upset annual feu-duties as shall be specified in any minutes to be annexed hereto, and the highest or only offerer shall be preferred to the purchase.

(*Second*) Each offer after the first shall exceed the immediately preceding offer by at least the sum of \_\_\_\_\_ sterling per foot (*or otherwise*), and each offerer shall subscribe his offer and shall become bound and obliged for the sum offered by him, whether his offer is subscribed or not, upon the conditions expressed in these Articles, or in any minute to be annexed hereto.

(*Third*) The feuar or purchaser shall be entitled to possession from and after the term of \_\_\_\_\_, and the feu-duty shall begin to run at the term of \_\_\_\_\_, and be payable half-yearly thereafter with interest and periodical duplicands, and on the other conditions fully set forth in the model Feu-Charter, which is hereby held as repeated and adopted as part of these conditions, and binding upon each offerer, or feuar, or purchaser, so far as applicable, as if herein contained in full.

(*Fourth*) The purchaser or feuar shall be bound within ten days after the roup, to consign the sum of \_\_\_\_\_ sterling, in respect of each lot feued by him, in the joint names of himself and the exposers, on deposit-receipt with the \_\_\_\_\_ Bank, which deposit-receipt shall be retained by the exposers, and shall be endorsed by them and returned to the feuar upon the building being carried up to the floor of the first flat above the level of the street; and in the event of any of the said purchasers or feuars failing to deposit the sum applicable to his purchase, the lot or lots feued by him shall *ipso facto* revert and belong to the exposers, and his feu and purchase shall be void and at an end without any necessity of any declarator to that

effect, and the purchaser or feuar so failing shall be bound to pay to the exposers the sum of £100 sterling as liquidate penalty for each lot in respect of which such failure occurs.

(*Fifth*) In case the purchaser or feuar shall fail to make the fore-said deposit, the exposers may give notice of his forfeiture of the purchase by registered letter put into the post-office and addressed to such person, and the exposers may either hold the said subjects or lot thereof, or of new expose the same to feu, or declare same to belong to the immediately preceding offerer under the same conditions.

(*Sixth*) The Superintendent of Works and the exposers (*or as the case may be*) shall set off and measure the said lots of ground, and determine the levels and all matters connected therewith, and shall also determine the amount of feu-duty payable for each lot, and the measurements certified under the hand of the said                      for the time, shall be held and considered final, as true measurements of the respective lots hereby expressed.

(*Seventh*) Each purchaser or feuar shall be bound immediately after his entry to enclose, so far as not already done, his feu or purchase from the adjoining ground or streets, with a sufficient wooden fence to the satisfaction of the said                      , and shall thereafter maintain the same in constant good repair until the completion of the buildings to be erected in terms of said Feu-Charter.

(*Eighth*) Should one person become feuar or purchaser of more than two of said lots, the feu-duty of the first two lots to be determined by the exposers shall commence to run at the date aforesaid, but the feu-duty of any additional lots shall begin to run one year later for the third and fourth lots, two years later for the fifth and sixth, and so on until the lots feued by any one person are exhausted.

(*Ninth*) The exposers shall be bound to exhibit Certificates and Searches for incumbrances affecting the foresaid subjects, and the successive proprietors thereof for forty years prior to the foresaid term of entry, and to purge the same, or such lot thereof as may be sold, of all incumbrances appearing on said Searches as affecting the same, and shall be bound to execute and deliver a valid Feu-Charter in terms of the said model deed to the purchaser and his heirs and assignees, but the offerers and purchaser shall be understood to have

(*Tenth*) The purchaser shall be bound to relieve the exposer of all claims in any way competent to tenants in virtue of either tax or rights of possession, for improvements, meliorations, growing crops, unexhausted manures, or otherwise, except only any claim for reduction of rent, on taking possession of the subjects or otherwise, for the purpose of building, and shall free the exposers of all claims of whatever nature at the instance of such tenants or possessors of all expense in connection therewith, and the feuars shall themselves arrange as to obtaining access to the said ground to be feued to them.

(*Twelfth*) The expense of the Feu-Charter to be granted in terms hereof shall be mutual.

(*Thirteenth*) , whom failing , shall be Judge of the Roup, with power to determine whatever questions or differences may occur at the roup betwixt the exposers and offerers, or among the offerers themselves, in relation to the foresaid roup, to prefer the highest offerer, and also to adjourn the said roup from time to time, and if any dispute shall arise between the exposers and the persons preferred to the purchase as to the true intent and meaning of these presents or the implement thereof, the same are hereby submitted, with power of prorogation from time to time, to the final decision of , whom failing , whom failing of an arbiter to be named by the Sheriff of the County of on application to him for that purpose by any party interested, as sole arbiter.

(*Lastly*) The expositors and the offerers oblige themselves to implement the foresaid articles to each other under the penalty of to be paid by the party failing to the party performing or willing to perform attour performance.—IN WITNESS WHEREOF.

## SECTION II

## THE DISPOSITION

This deed, greatly simplified by recent legislation, still embodies the essence of the ancient process for the transfer of land. A short statutory form was first introduced by the Transference of Land Act, 1847, which at the same time gave a definite statutory effect and meaning to the shortened clauses. The Titles to Land Act, 1858, the Titles to Land Consolidation Act of 1868, and the Conveyancing Act of 1874, still further simplified the principal clauses, introduced description of lands and burdens by reference, and rendered certain portions of the older forms no longer necessary.

We now give an example of the disposition in its simplest form.

## 1. Disposition to Purchaser.

I, A (*designation*), heritable proprietor of the subjects hereinafter disposed, IN CONSIDERATION of the sum of £            sterling now paid to me by B (*designation*), of which sum I hereby acknowledge receipt, DO hereby SELL and DISPONE to the said B and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here describe the subjects conveyed, stating the parish where this can be done, and county, or the burgh and county, in which these are situated, or refer to particular description as contained in a prior recorded conveyance, deed, or instrument, in terms of Schedule (O) of 37 & 38 Vict. c. 94; (a)*)

(a) Schedule (O) of 37 & 38 Vict. c. 94 (which refers to s. 61 of the Act), is as follows:—

## SCHEDULE (O).

## CLAUSE OF REFERENCE TO PARTICULAR DESCRIPTION OF LANDS CONTAINED IN A PRIOR CONVEYANCE, DEED, OR INSTRUMENT.

The lands (or subjects) and others (or the lands delineated and coloured on a copy of the Ordnance Survey map hereto annexed, and signed as relative hereto) (or the lands of A and others) (or the house No. 10            Street and

together with my whole right, title, and interest, present and future, therein (*if the subjects are to be held under any burdens or restrictions not already constituted, these will be here inserted, as shown in the style of Feu-Charter, p. 4; and if held under burdens or restrictions already constituted, these will be referred to in terms of Schedule (D) of 31 & 32 Vict. c. 101:* (a) WITH ENTRY at the term of : AND I assign the writs, and have delivered the same according to inventory hereto annexed and subscribed by me as relative hereto (*or otherwise as may be desired*): AND I assign the rents: AND I bind myself to free and relieve the said disponent and his foresaids of all feu-duties, casualties and public burdens (b): AND I grant warrandice: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

With regard to the above form we have to remark—

(1) That it is equally applicable to feudal and burgage subjects, the distinction between these having been abolished by the Conveyancing Act of 1874 (ss. 25 and 26).

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others) (*or other like short description*), in the county of (or in the burgh of and county of , as the case may be), being the lands (or subjects) particularly described in the disposition (*or other conveyance, deed, or instrument, as the case may be*), granted by C D, and dated (*insert date*), and recorded in the (*specify Register of Sasines*), on the day of (or as particularly described in the instrument of sasine or notarial instrument) recorded, &c., or as the case may be; *if part only of lands is conveyed, describe such part as above, and add—being part of the lands particularly described, &c., or thus—being the lands (or subjects) as particularly described, &c., with the exception of (and describe the part excepted)*. In every case of a description by reference sufficient information should be given, notwithstanding the reference, as to the nature of the subject and its situation, as to reasonably identify it.

(a) Schedule (D) of 31 & 32 Vict. c. 101 (which refers to s. 10 of the Act), is as follows:—

#### CLAUSE OF REFERENCE TO REAL BURDENS, CONDITIONS, &c., IN INVESTITURE.

[*After the description of the lands, instead of inserting the burdens, &c., at length, these may be referred to as follows, viz.*—But always with and under the real burdens, conditions, provisions, and limitations [*or such of these as may apply or have reference to the case*] specified in a deed [*or instrument (here specify a deed or conveyance in which the burdens, &c., were first inserted, or any subsequent deed or conveyance in which they are inserted, forming part of the progress of the titles to the lands)*], recorded [*specify Register of Sasines, or, if the deed or conveyance as recorded has been previously referred to, say, in the said deed (or instrument)—recorded as aforesaid*] on the day of in the year .

[*And in subsequent clauses in which it is requisite or usual to refer again to the burdens, &c., the reference may be made thus*—But always with and under the real burdens, conditions, provisions, and limitations [*or such of these as may apply or have reference to the case*] before referred to.

(b) *Note.*—If the subjects have been held burgage this clause will be as follows:—“And I bind myself to free and relieve the said disponent and his foresaids of all ground-annual, cess, annuity, and other public burdens.”

(2) That although the word "dispone" is by section 27 of this Act declared unnecessary in any deed or writing as a conveyance of heritage coming into operation after the passing of that Act (7th August 1874), provided it contains any other word or words importing conveyance or transference, or present intention to convey or transfer, it appears of advantage still to retain it, as having by practice become distinctive of such conveyance.

(3) That the above form differs from the Schedule (B), No. 1, appended to the Act of 1868, in omitting the clauses of resignation and holding. The Conveyancing Act of 1874 makes these unnecessary; but in a disposition by a vassal to a superior for the purpose of consolidation, the clause "and I resign the said subjects and others *ad perpetuam remanentiam*" may be inserted (see below, p. 101).

In the preceding form it is taken for granted that there are no special circumstances in the position of the parties which can affect the expression of the deed; that the sale has proceeded on a private bargain between them; that the subject sold is one which has passed undivided by a connected series of titles; that it is in the natural possession of the seller; that his titles are completed by infestment in his own person; and that these titles are to pass into the custody of the purchaser along with the disposition.

In other circumstances, or in case accessory provisions are necessary, corresponding variations on the narrative, dispositive, or other clauses of the disposition must be adopted; and of these examples will now be given.

I.—VARIATIONS WITH RESPECT TO THE DISPONER, and which will be required according as the deed is granted by—

1. The Tutors of a Pupil.
2. A Minor with Consent of his Curators.
3. A Husband with Consent of his Wife (including judicial ratification).
4. A Wife with Consent of her Husband (including judicial ratification).
5. An Heir unserved.
6. Testamentary Trustees.
7. Trustees for Creditors.
8. A Special Commissioner.
9. A Corporation or a Limited Company.
10. A Limited Proprietor under Judicial Authority, or otherwise.
11. A Firm.
12. Unincorporated Bodies.

(1.) *By Tutors for a Pupil.*

Alienation of a pupil's heritage is not at common law within the powers of a tutor, but the Court of Session has, in the exercise of its *mobile officium*, granted the tutor a warrant to sell, in cases of necessity or

of extreme expediency.(a) Where the pupil's property is entailed, a sale can proceed only under the sanction of a private Act of Parliament, in order to obtain which necessity must in like manner be proved.

It is to be remarked that power to sell is not one of the special powers for which a judicial factor may apply to the Court under the Pupils Protection Act of 1849.

In the case of *Clinton*, 20th October 1875, 3 R. 62, special authority was given to a father, as administrator-in-law of his pupil son, to feu part of the son's estate. When a sale is made, the disposition is granted by the tutor or guardian, without making up any title in his own person, if the pupil's title is complete.

The following is a style which relates to a sale for payment of debt, and can easily be accommodated to other circumstances if these occur:—

### Disposition by Tutors.

WE, A (*designation*) and B (*designation*), tutors nominated and appointed by the deceased C (*designation*) to D (*designation*), his eldest son, conform to Trust-Settlement containing a nomination of tutors and curators, executed by him, bearing date , and recorded in the Books of Council and Session ,  
 CONSIDERING that the said C was at the time of his death indebted and owing sundry sums of money which affected his estate of X in the county of Y ; and that it became necessary to dispose of the said estate for payment of the said debts ; that an action having accordingly been brought in the Court of Session at our instance for the above purpose against E, F, and G (*give full names and designations in each case*), nearest in kin of the said D, and the heirs entitled to succeed in their order after him to the said estate, and against the creditors of the said deceased C, the said Court, by their act and decree, dated , and extracted , authorised us, the said tutors, to sell the said estate in manner and on the conditions therein specified, as the said act and decree in itself more fully bears: AND that the said estate having in terms thereof been advertised, and thereafter exposed to sale by public roup, &c.: THEREFORE WE, as tutors foresaid, DO hereby, under the authority of the said act and decree, SELL and DISPONE to and in favour of, &c. (b) (*as in usual form*).

(a) See the cases of *Logan*, 25 R. 51, and *Gilligan*, 1898, 25 R. 876, and also *Parrot v. Fraser*, 1810, Hume, 889, as to the limitation of tutors' powers, even when they had received express authority from the father of the pupil, to sell heritage.

(b) If there is any other speciality, it will probably be mentioned in the decree, which should also specify the nature of the warrandice.

The clause of warrandice will bind the tutors in warrandice from fact and deed only, and the pupil, and his heirs and successors, in absolute warrandice. And in a case of this nature it would clearly be expedient for the purchaser to have his title fortified by conveyances of the debts paid out of the price of his purchase, such conveyances being qualified so as to be effectual only *subsidiarie*, and in the event of the title to the estate itself being disturbed.

(2.) *By a Minor with Consent of his Curators.*(a)

By the law of Scotland a minor can validly, by a deed *inter vivos*, convey his heritable estate. If he was no curator, or if the curator consents, the deed is reducible within the *quadriennium utile* on the grounds of minority and lesion. If he has a curator, and the deed is granted without his consent, the deed is reducible within forty years. It is of importance, therefore, to preserve evidence of the application of the price, and to state the same in the disposition or in some relative document. In case of giving the statement in the disposition, the deed may be expressed as follows:—

I, A (*designation*), heritable proprietor of the subjects after disposed, with the special advice and consent of B, C, and D (*designations*), accepting and surviving curators appointed to me by the now deceased E (*designation*), my father, conform to Trust-Disposition and Settlement executed by him, containing a nomination of tutors and curators, whereby a majority of the tutors and curators accepting and acting for the time is declared a quorum, dated \_\_\_\_\_, and recorded in the Books of Council and Session \_\_\_\_\_  
(*or curators chosen by me in an action of choosing curators at my instance, &c., as the case may be*), in CONSIDERATION of the sum of £ \_\_\_\_\_ sterling, being the sum stipulated and agreed on between me, with consent foresaid, and F (*designation*), as the adequate price and value of the lands and others after specified; and which sum of money, it was agreed between me and the said F was to be applied by him in paying the following debts due by my father, viz. (*here specify the grounds of debt*): AND NOW SEEING that the said F has, in implement of the said agreement, applied the said price in manner foresaid, and has obtained assignations thereof in

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(a) *Note*.—With reference to *mortis causa* dispositions by minors, see case of *Brand's Trustees*, 19th Dec. 1874, 2 R. 258, where the rule applicable to subjects heritable merely *destinatione* is distinguished from that applicable to subjects heritable *sua natura*. The style given above has no reference to *curators bonis*, who cannot sell without the authority of the Court.

his favour to enable him to discharge the same as the consideration for the granting hereof: THEREFORE, &c.

Such a disposition as this will in general proceed on articles of roup; and the narrative will be modified accordingly. The debts paid out of the price may be actually discharged and the discharged grounds of debt delivered to the seller. If, however, the above style is adopted, a formal discharge of the debts may be inserted at the end, declaring that they shall revive as if still subsisting, should the disposition ever be successfully impugned. The warrandice will be absolute against the minor, and from fact and deed only against the curators. The disposition will be signed by the curators as well as the minor.

(3.) *By a Husband with Consent of his Wife.*

I, A (*name and designation*), heritable proprietor of the lands and others hereinafter disposed, with consent of B (*full name*), my spouse, for all right of liferent, conjunct fee, terce, or other right which she has or can claim therein, or to any annual-rent or annuity payable furth thereof; and I the said B, for myself, my own right and interest, with the special advice and consent of the said A, my husband; and we both, with joint consent and assent, IN CONSIDERATION of, &c. (*here narrate the cause of granting, &c.*): THEREFORE, &c.

Dispositions of this kind ought to be judicially ratified by the wife, the form of ratification being as follows:—

At                   , the                    day of                    19   , IN PRESENCE of F (*name and designation*), one of His Majesty's Justices of the Peace for                   , COMPEARED personally B (*full name*), wife of A (*name and designation*), and in absence of her said husband RATIFIED and APPROVED of the within Disposition (*if the Ratification be separate from the Disposition say—of a Disposition, dated*, granted by her said husband for himself, with consent of her the said B, and by her for herself with consent of her said husband, and by them both with joint consent and assent, in favour of D (*designation*), of the lands of E and others therein specified), and that in the whole articles and clauses thereof; and declared that she was noways coacted, compelled, or seduced to grant or concur in the same, but that she did so of her own free will and motive; and she gave her great oath that she would never quarrel or impugn the same, directly or indirectly, in any manner of way, in time coming, as she should answer to God.

(Signed) B.

F, J.P.

If the ratification be separate from the disposition, a docquet should be endorsed on the latter, bearing that it is the disposition referred to in the ratification. The docquet will be signed by the wife and the Justice.

(4.) *By a Wife with Consent of her Husband.*

If the lands to be conveyed are the property of the wife, she is of course the principal grantor of the deed; but the husband concurs for any right or interest he may have, and as taking burden on him for the wife, even if his rights are expressly excluded in the title in favour of his wife. A wife may dispoise without consent of her husband in certain cases where his rights have been conventionally, or by statute, or in some other way excluded; but, on the other hand, *e.g.*, in regard to marriage provisions, even with consent of her husband, she cannot alienate her property.

The form of such deed is as follows:—

I, A (*full name*), wife of B (*name and designation*), heritable proprietrix of the subjects hereinafter disposed, with the special advice and consent of my said husband, and I the said B, for myself, my own right and interest, and as taking burden on me for my said wife, and we both, and with joint consent and assent, IN CONSIDERATION of the sum of £            sterling instantly (*or as the case may be*) now paid to us by C (*name and designation*) as the price thereof, of which sum we hereby acknowledge the receipt, DO hereby SELL and DISPOSE (*as before, p. 65*): WITH ENTRY at the term of            : AND we assign the writs, and have delivered the same according to inventory (*or otherwise as the case may be*): AND we assign the rents: AND we bind ourselves to free and relieve our said dispoinee and his fore-saids of all feu-duties, casualties, and public burdens: AND we grant warrandice: AND we consent to registration hereof for preservation.  
—IN WITNESS WHEREOF, &c.

A ratification is appropriate in this as in the preceding case.

(5.) *By an Heir unserved.*

In this case the purchaser has two modes of completing his title, according as it is or is not intended to complete a title in the person of the heir. The latter case is provided for by s. 10 of the Conveyancing Act of 1874. In the former case, which is the only one we are called on to consider here, the disposition by the heir will run as follows:—

I, A (*designation*), eldest lawful son (*or otherwise as the case may be*) and apparent heir of the deceased B (*designation*), and as such,

proprietor of the subjects after disposed, IN CONSIDERATION of the sum of           sterling now paid to me by C (*designation*) as the price thereof, of which sum I hereby acknowledge the receipt, DO hereby SELL and dispone (*and so on, as in the case of an ordinary Disposition, down to the close of the dispositive clause and term of entry, after which the deed will proceed as follows*)—In which subjects I bind myself at my own expense to procure myself lawfully served and decerned heir foresaid, and validly infeft and seised: AND I hereby constitute the said C my procurator, with full power to obtain me served and decerned and infeft as aforesaid, and for that purpose, for me and on my behalf, to subscribe and present all Petitions for Service, whether General or Special, obtain decrees therein, and to record such decrees or to expedite and record Notarial Instruments thereon, and generally, and as fully in all respects as I could do myself, to do whatever else may be necessary or proper in the premises: AND I assign the writs, &c. (*add remaining clauses as in ordinary Disposition*).

(6.) *By Testamentary Trustees.*

WE, A (*designation*), B (*designation*), and C (*designation*), trustees original and assumed, now acting under, &c.

The settlement codicils, &c., constituting the trust should be identified by granter, date, recording, &c. The clauses are the same as in an ordinary disposition, the trustees granting the formal clauses "as trustees foresaid." Warrandice will be given from fact and deed only, but the trust-estate and the beneficiaries thereunder may be bound in full warrandice. It is not necessary that all the trustees should be infeft. The deed is sufficiently granted if signed by a majority and quorum, this being stated in the testing clause, though the deed itself is in name of the whole trustees.

(7.) *By Trustees for Creditors.*

A disposition of heritable subjects by trustees for creditors contains no peculiarity except in the narrative, which must be regulated by the nature and objects of the trust, and the mode in which the subjects have been sold, viz., by public roup or private bargain. A trustee under a cessio must make up his own title by notarial instrument, and must sell by public roup. A trustee in sequestration may sell by public roup without making up a title, or may concur with a heritable creditor in selling, or may sell privately with certain creditors' consent, and with the consent of the Accountant of Court, but the Accountant is not made a party to the disposition.

In the case of a private sale, under a trust for payment of debt, the narrative may run thus :—

WE, A (*designation*) and B (*designation*), CONSIDERING that C (*designation*) by Trust-Disposition, dated \_\_\_\_\_, and with Warrant of Registration thereon in our favour, recorded in the (*specify Register of Sasines and date of recording*), for the causes and under the conditions therein mentioned, conveyed to us the subjects hereinafter disposed, and that in trust for behoof of his creditors, in manner and with the powers therein specified (*here narrate or refer to the powers to sell, and the declaration that the purchaser is not to be concerned with the application of the price*): AND CONSIDERING that, by virtue of the powers thereby conferred on us to sell the said subjects by private bargain, we have agreed to SELL the same to D (*designation*) for the sum of £ \_\_\_\_\_ sterling, as the stipulated price thereof: AND NOW SEEING that the said D has made payment to us, as trustees foresaid, of the said sum of £ \_\_\_\_\_, whereof we hereby acknowledge the receipt: THEREFORE WE, as trustees foresaid, DO hereby SELL and DISPONE, &c.

The deed proceeds in ordinary form; only it is to be observed that the trustees in such a case bind themselves in warrandice only from fact and deed. They may, however, assign the clause of warrandice contained in the conveyance in their favour, by which also power is usually conferred on them to bind their constituent and the trust-estate in absolute warrandice, or otherwise exercise these powers as may be desired. A disposition by a trustee on a bankrupt estate should be granted with consent of the commissioners.

(8.) *By a Person having a Special Commission to sell, receive Payment of the Price, and Grant the necessary Disposition.*

I, A (*designation*), factor and commissioner for B (*designation*), heritable proprietor of the subjects after disposed, conform to factory and commission by the said B in my favour, dated \_\_\_\_\_, and recorded in the Books of Council and Session \_\_\_\_\_, by which factory and commission I am specially empowered to sell the said subjects, and that either by public roup or private bargain, to receive payment of the price, and to grant and deliver to the purchaser a Disposition thereof containing all usual and necessary clauses, and particularly a clause binding the said B in absolute warrandice, and by which it is specially provided and declared that the purchaser

shall have no concern with the application of the price to be paid by him: CONSIDERING that, in exercise of the powers so conferred on me, I agreed to sell the said subjects to C (*designation*) at the price of £ (if the sale has been under articles of roup, the narrative will be varied accordingly, as in the form hereafter given for such sale, p. 76); and that the said C has instantly made payment to me of the said price, whereof I hereby acknowledge the receipt: THEREFORE I DO hereby SELL and DISPONE, &c.

The deed then proceeds in the usual form, but with this variation in the clause of warrandice:—

AND I grant warrandice on my own part from fact and deed only, and bind the said B in absolute warrandice.

(9.) *By a Burgh or other Corporation.*(a)

WE, the Provost, Magistrates, and Councillors of the Burgh of A, as representing the community thereof, CONSIDERING that (*here narrate the inductive cause of the sale, and the price agreed upon*(b)): AND SEEING that the said X has instantly made payment to F, Treasurer of the said Burgh of A, for behoof of the community of the said burgh, the foresaid sum of £ : THEREFORE WE DO hereby SELL and DISPONE, &c.

In the clause of warrandice and other obligatory clauses the granters bind themselves and their successors in office, and the community which they represent. The testing clause will bear that the deed is signed at a meeting and in name and by authority of the council by the provost, or other magistrate or councillor presiding, and the town clerk, either with or without the common seal being adhibited. In the case of Edinburgh it runs as follows:—

IN witness whereof these presents, written by , clerk to A, Town Clerk of Edinburgh, are subscribed by the Right Honourable and the said A, both of the City of Edinburgh, in name and by authority of the Lord Provost, Magistrates, and remanent Members of Council present in council at Edinburgh on the day of , before these witnesses, &c.

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(a) See the Town Councils (Scotland) Act, 1900, s. 9.

(b) The conveyancer must keep in view that by 3 Geo. IV. c. 91, ss. 5 and 6, certain regulations are prescribed for the sale of property belonging to royal burghs; among others, that the sale shall be made by public roup. In cases falling under that Act, therefore, the narrative of the conveyance must state the observance of the provisions of the statute, and recite the articles of roup, according to the form given at p. 76.

By altering the narrative according to the fact the preceding form will apply to the case of a corporation or body politic of any other description disposing of their property. In the case of corporations by royal charter, and joint-stock companies and banking companies incorporated under the Acts regulating these companies, the conveyance is granted in the corporate name, as, for example—"We, the Commercial Bank of Scotland, "incorporated by royal charter."

Corporations, joint-stock companies, banks, &c.

As to the manner in which deeds by companies registered under the Companies Acts may be executed, section 56 of the Conveyancing Act of 1874 provides that "Any deed executed after the commencement of this Act to which any company registered under 'The Companies Acts 1862 'and 1867' is a party, shall be held to be validly executed in Scotland on behalf of such Company if the same is either executed in terms of the provisions of these Acts, or is sealed with the common Seal of the Company, and subscribed on behalf of the Company by two of the Ordinary Directors and the Secretary of the Company, and such subscription on behalf of the Company shall be equally binding and effectual whether attested by witnesses or not." Certain companies, however, have in addition special methods of execution of deeds, for which reference would require to be made to their articles of association.

Execution of deeds by limited companies.

(10.) *By a Limited Proprietor under Judicial Authority.*

An heir of entail, for example, may, in virtue of a special Act of Parliament or the Entail Statutes, have obtained authority from the Court of Session to sell certain portions of the estate. In such cases the narrative, before reciting the articles of roup, &c., will proceed thus:—

I, A (*designation*), heir of entail in possession of the estate of X, in the county of Y, CONSIDERING that by decree of the Lords of Council and Session, dated the                      day of                      , obtained at my instance, under the authority of the Act of the 11 & 12 Vict. c. 36, entitled, "An Act for the Amendment of the Law of Entail "in Scotland" (*or otherwise, as the case may be*), warrant was granted for the sale of certain parts of the said estate, including the subjects after disposed, by public roup, &c.

(11.) *By a Firm.*

The only peculiarity in this case is that the disposition will be granted by the persons in whose name the title stands in trust for the firm, but the firm and all the partners should also join as granters of the deed.

(12.) *By an Unincorporated Body.*

Clubs, societies, or associations having no legal *persona* may hold heritable property by trustees, whose powers will be regulated and limited by the rules of the body. In the absence of a sufficiently express power in the title of such trustees, the disposition should narrate the steps taken by the body to authorise their trustees to sell.

## II.—VARIATIONS WITH RESPECT TO THE CAUSE OF GRANTING.

1. Gratuitous Dispositions.
2. Disposition proceeding upon a Minute of Sale.
3. Disposition proceeding upon Articles of Roup, or under the Powers of Sale in a Bond.
4. Disposition under the Powers contained in a Bond and Disposition in Security.
5. Disposition where it is agreed that Existing Securities shall transmit against the Purchaser.

(1.) *Gratuitous Dispositions.*

By the provisions of the Stamp Laws it is required that the true price or consideration of granting be expressed, in respect of which a stamp indicating an *ad valorem* duty must be impressed on the deed, unless where it is granted *mortis causa*, and is therefore exempt from duty. If, therefore, the cause of granting the disposition be gratuitous, the ordinary deed stamp which may be in force at the time (*presently* 10s.) will be impressed, and the disposition will run as follows :—

I, A (*designation*), heritable proprietor of the subjects hereinafter disposed, for the love, favour, and affection which I have and bear to B (*designation*) (*or* for certain good causes and considerations, but without any price being paid therefor), DO hereby GIVE, GRANT, and DISPONE, &c.

This form is distinguished from the ordinary disposition chiefly by the substitution of the words “give” or “grant” for the term “sell,” which is used in the latter. The clause of warrandice will not, of course, in a gratuitous disposition be absolute, but it is usual for the granter to warrant the conveyance from his own facts and deeds.

(2.) *Disposition proceeding on a Minute of Sale.*

I, A (*designation*), heritable proprietor of the subjects after disposed, IN IMPLEMENT of a Minute of Sale dated \_\_\_\_\_, entered into between me *of the first part*, and B (*designation*), *of the second part*, and IN CONSIDERATION of the sum of £ \_\_\_\_\_ sterling instantly paid to me by the said B, being the price thereby agreed on, of which I hereby acknowledge the receipt, DO hereby SELL and DISPONE to the said B, &c.

(3.) *Disposition proceeding upon Articles of Roup.*

I, A (*designation*), heritable proprietor of the subjects after disposed, CONSIDERING that upon the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, I

exposed the said subjects to public roup and sale, in terms of certain Articles and Conditions of Roup dated the : AND that B being the highest (or only) offerer for said subjects (*if necessary add here*—and having declared that he made the offer on behalf of C, the said C) was by the Judge of the Roup preferred to the purchase at the price of £ sterling, all as the said Articles and Minute of Enactment and Preference thereon in themselves more fully bear: AND NOW SEEING that the said B (or C) has, in terms of the said Articles, made payment to me of the said price of £ sterling, of which I hereby acknowledge the receipt: THEREFORE I DO hereby DISPONE, &c.

If the purchase is made for behoof of another, and the agent has not declared this at the roup, but is himself enacted the purchaser, the narrative clause will show this, and he should be made a party to the disposition, which in these circumstances will be varied as follows :—

AND SEEING that the said B has since declared that he made the said purchase for behoof of C (*designation*), and that the said C has, in terms of the said Articles, made payment to me of the said price of £ sterling, of which I hereby acknowledge the receipt: THEREFORE I the said A, with consent of the said B, and I the said B for all right, title, and interest I have in and to the said subjects in consequence of my said purchase, and we both with joint consent and assent, DO hereby DISPONE, &c. (*as before*).

Where the lands, &c., are sold under the powers contained in a bond and disposition in security, the disposition will be in the following terms :—

(4) *Disposition under the Powers contained in a Bond and Disposition in Security.*

I, A (*designation*), CONSIDERING that in virtue of the powers of sale contained in a Bond and Disposition in Security for £ sterling granted by B (*designation*) in my favour, dated , and recorded (*specify Register of Sasines and date of recording*), and after due intimation, requisition, and protest, and advertisements in terms of law, I, on the day of , exposed the subjects after mentioned to public sale in terms of Articles and Conditions of Roup executed by me, &c.

Continue as in the case of an ordinary disposition under Articles of Roup down to the clause of warrandice, which will be expressed in the following terms:—

AND I grant warrandice from fact and deed only, and bind the said B and his heirs and successors in absolute warrandice.

(5.) *Disposition where it is agreed that Existing Securities shall form Part of the Price, and shall transmit against the Purchaser.*

By section 47 of the Conveyancing Act of 1874 it is enacted that “an heritable security for money duly constituted upon an estate in land” (subject to the limitation provided by the Act in the case of an heir) “shall, together with any personal obligation to pay principal, interest, and penalty contained in the deed or instrument whereby the security is constituted, transmit against any person taking such estate by succession, gift or bequest, or by conveyance *when an agreement to that effect appears in gremio of the conveyance*, and shall be a burden upon his title in the same manner as it was upon that of the ancestor or author, without the necessity of a bond of corroboration or other deed or procedure.”

Where accordingly it is arranged that his purchaser shall undertake the personal obligations in an existing security, the narrative clause of the disposition may be expressed as follows:—

I, A (*designation*), heritable proprietor of the subjects hereinafter disposed, IN CONSIDERATION of the sum of £            sterling instantly paid to me by B (*designation*), of which I hereby acknowledge the receipt, AND ALSO IN CONSIDERATION of his freeing and relieving me of the whole obligations contained in a Bond and Disposition in Security for £            over said subjects granted by me (*or as the case may be*) in favour of C (*designation*), dated            , and recorded (*specify Register of Sasines and date of recording*), which the said B by signature hereto agrees shall transmit against him and be a burden on his title in terms of the forty-seventh section of the “Conveyancing (Scotland) Act, 1874,”—the said two sums of £            and £            amounting together to the sum of £            sterling, being the agreed-on price of said subjects—DO hereby SELL and DISPONE, &c.

Such an agreement does not relieve the original granter of the bond in any question with the creditor. If that be desired the conveyance should contain an express discharge by the creditor of the seller's personal obligations under the bond. It is usual to except the existing security from the warrandice.

## III.—VARIATIONS WITH RESPECT TO THE DISPONEE.

Dispositive  
clause.

1. Disposition to a Person under age or acting by a Commissioner.
2. Disposition to the Magistrates of a Burgh and Corporations.
3. Disposition to a Private Firm or Company.
4. Disposition to a Married Woman, excluding her Husband's Rights.
5. Disposition to Two or more Persons in Conjunct Fee, or in Conjunct Fee and Liferent.

(1.) *Disposition to a Pupil, or Person acting by a Commissioner.*

I, A (*designation*), heritable proprietor of the subjects after disposed, IN CONSIDERATION of the sum of £            sterling stipulated and agreed on betwixt me and C (*designation*), tutor nominated to B (*designation*), son of D (*designation*), by (*here specify the deed or deeds under which the tutor acts, and the register and date of recording if the deed has been registered*), in name and on behalf of his said pupil, as the price of the subjects after specified, of which sum I hereby acknowledge the receipt and discharge the said B and C respectively, DO hereby SELL and DISPONE to and in favour of the said B and his heirs and assignees whomsoever, heritably and irredeemably, &c.

The above form applies also to the case where from absence or any other cause the purchase has been made by a commissioner; substituting "commissioner" for "tutor," specifying in like manner the deed under which he acts, and "constituent" for "pupil."

If the donee be a minor with curators, the narrative will run thus :—

Disposition  
to minor  
with  
curators.

IN CONSIDERATION of the sum of £            sterling instantly paid to me by B (*designation*), with consent of C and D (*designation*), curators nominated to him by (*specify deed or deeds under which they act*), of which sum I acknowledge the receipt and discharge the said B, DO hereby, &c.

The consideration may arise from a variety of matters, and may not be a pecuniary one. It may, for instance, be implement of a testamentary bequest, or the purchase may be a gift from the father of a child as his guardian. In such cases the narrative of the cause of granting should be full and explicit, and the destination very carefully framed so as to correspond with the wishes of the testator or donor.

(2.) *Disposition to the Magistrates of a Burgh.*

I, A (*designation*), heritable proprietor of the subjects after disposed, IN CONSIDERATION of the sum of £            sterling instantly

paid to me (*or as the case may be*) by G (*designation*), present Treasurer of the Burgh of X, for and on behalf of the community of the said burgh as the price of said subjects, of which sum I hereby acknowledge the receipt, DO hereby SELL and DISPONE to and in favour of the Provost, Magistrates and Councillors of the said Burgh of X and their successors in office, as representing the community of the said burgh (*a*) and their assignees, heritably and irredeemably, ALL AND WHOLE, &c.

Corpora-  
tions.

In treating on a former page of dispositions by corporations, it has been shown that these can act by the corporate name, and the same rules apply when the conveyance is in their favour. In the case of conveyances to unincorporated bodies, the title may be taken either in favour of all the members, or, as is more usual, to one or two of them *in trust* for the whole.

Where the purchasers are a private firm or company, the conveyance is taken in favour of trustees for the company—commonly the individual partners as trustees for the firm. The following is an example :—

(3.) *Disposition in favour of a Private Company.*

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling instantly paid to me by B, C, & Company (*describe the company*), whereof I hereby acknowledge the receipt, DO hereby SELL and DISPONE to and in favour of B, C, and D (*add their respective designations*), the sole partners of said company (*or as may be desired*), and the survivors and survivor of them, and the heirs of the last survivor, as trustees and trustee for behoof of said B, C, & Company, and the partners thereof, present and future, and to the assignees whomsoever of said trustees or trustee, heritably and irredeemably, ALL AND WHOLE, &c.

Power to the trustees for the time being (provided all the partners or the survivors of them, or a specified majority consent) to sell and to borrow money on the security of the subjects disposed, and a declaration that purchasers or lenders shall have no concern with the application of the sums paid or lent, are occasionally inserted in such destinations, and if thought necessary may be introduced parenthetically after the words "present and future." A retiring partner infest as a trustee must be feudally divested.

(4.) *Disposition to a Married Woman, excluding her Husband's Rights.*

I, A (*designation*), heritable proprietor of the subjects after disposed, IN CONSIDERATION of the sum of £ sterling instantly

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(a) See the Town Councils (Scotland) Act, 1900, s. 9.

paid to me by B (*name*), wife of C (*designation*), out of funds belonging to the said B exclusive of her husband's *jus mariti*, DO hereby (with consent of the said C, *if it can be got ; if not, reference to it may be omitted*) SELL and DISPONE to the said B, and her heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE, &c.; but always under this express declaration, That the said C, husband of the said B, shall have no right or title to the said subjects, or the rents, maills, and duties of the same, or to any part thereof, and that the same shall neither be liable to his deeds nor subject to the legal diligence of his creditors for payment of debts already contracted or to be contracted by him at any time hereafter; but notwithstanding such deeds, debts, or diligence, it shall be lawful for the said B, by herself alone, without the consent of her said husband, to uplift and discharge the rents, feu-duties, and casualties of the subjects before mentioned, and to apply the same as she shall think proper: WITH power to the said B to output and input tenants, set tacks, and do every other thing in relation to the management thereof as if she were still unmarried—the *jus mariti*, rights of administration and courtesy, and all other right or title on the part of the said C, being hereby expressly excluded (*the other clauses will be in usual form*).

#### (5.) *Dispositions with Special Destinations.*

In a work of this kind it would be out of place to do more than give a few of the more common examples. Most of the decided cases on destinations are very special. The subject, however, is exhaustively dealt with by Mr. Craigie in his "Scottish Law of Conveyancing (Heritable Rights)," 3rd edition, to which the conveyancer is referred.

The following table gives the destinations most frequently in use, and their meanings:—

#### 1. DESTINATIONS TO STRANGERS.

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| <ol style="list-style-type: none"> <li>1. To A.</li> <li>2. To A { <i>and</i><br/><i>or</i> his heirs.</li> <li>3. To A and his heirs whomsoever.</li> <li>4. To A and his heirs and assignees.</li> <li>5. To A and his heirs and assignees<br/>whomsoever.</li> <li>6. To A { <i>and</i><br/><i>or</i> his successors.</li> <li>7. To A and his heirs { <i>and</i><br/><i>or</i> successors.</li> </ol> | <p>A is fiar; but if he dies intestate, his heir-at-law succeeds as such and not as heir of provision. If, however, the destination to A simply (No. 1) occurs in a <i>mortis causa</i> undelivered deed, and A predeceases the granter, the bequest lapses absolutely, unless the condition <i>si sine liberis decesserit</i> applies, in which case A's heir would succeed.</p> |
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|---|--|
| 8. To A, whom failing to B.   | A is fiar ; but if he dies without evacuating the destination, B takes unless the condition <i>si sine liberis</i> applies.  |
| 9. To A and his heirs, whom failing to B.   | A is fiar ; but if he dies without evacuating the destination, his heir-at-law takes as such. (These two destinations are ineffectual in a deed of entail.)  |
| 10. To A and his heirs whomsoever, whom failing to B.   |  |
| 11. To A and the heirs of his body, whom failing to B.  | The destinations here are to a select class of heirs—heirs of provision—and they must all be exhausted before B can take.  |
| 12. To A and the heirs male of his body, whom failing to B.   |  |
| 13. To A and his heirs male, whom failing to B.   |  |
| 14. To A and the heirs male of his body, whom failing to the heirs female of his body, the eldest heir female always succeeding without division and excluding heirs-portioners, whom failing to B. |  |
| 15. To A and B.   | A and B are fiars of one-half respectively ; and each is succeeded on intestacy by his heir-at-law.  |
| 16. To A and B equally ( <i>or jointly, or conjunctly, or in conjunct fee</i> ).  |  |
| 17. To A and B and their heirs.   |  |
| 18. To A and B equally ( <i>or jointly, or conjunctly, or in conjunct fee</i> ) and their heirs ( <i>or heirs and assignees whomsoever</i> ).   |  |
| 19. To A and B and the survivor.  | A and B are fiars of one-half each, subject however to this qualification, that if one predeceases without having evacuated the destination by <i>inter vivos</i> or <i>mortis causa</i> deed, the survivor becomes fiar of the whole. |
| 20. To A and B and the survivor and his ( <i>or their</i> ) heirs.  |  |
| 21. To A and B in conjunct fee and liferent.  | A and B are fiars of one-half each, but each half is burdened with the eventual liferent of the other, and can be sold, burdened, or adjudged only under that qualification.   |
| 22. To A and B in conjunct fee and liferent and their heirs.  |  |
| 23. To A and B and to the heirs of B.   | B is sole fiar in respect that his heirs alone are called. A has a mere liferent of one-half.  |
| 24. To A and B jointly ( <i>or equally, or conjunctly</i> ), and to the heirs of B.   |  |
| 25. To A in liferent and B in fee.  | B is fiar ; burdened in (25) with a liferent of the whole to A ; in (26) with a liferent of one-half only to A.  |
| 26. To A and B in liferent and to B in fee.   |  |
| 27. To A and B and the survivor of them in liferent, and to B ( <i>or to B and his heirs and assignees whomsoever</i> ) in fee.   | B is fiar ; burdened with a liferent of one-half share to A during B's life, and with a liferent of whole to A if B predeceases him.   |

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| 28. To A, B, and C in conjunct liferent (or conjunctly, or jointly in liferent), and to D in fee. | D is fiar; burdened with a liferent of the whole, so long as any one of A, B, and C is alive.                  |
| 29. To A, B, and C, and the survivors or survivor of them in liferent, and to D in fee.           |  |
| 30. To A in liferent and his heirs in fee.  | A is fiar.   |
| 31. To A in liferent alienarily (or only, or alimentarily) and his heirs in fee.                  | A is only a liferenter, but holds a fiduciary fee for the person who may be his heir at the date of his death. |
| 32. To A in liferent and the children of B in fee.  | A is liferenter: B's children are fiars.   |

## 2. DESTINATIONS TO HUSBAND AND WIFE.

Great care should be taken with these, as in the disposal of the fee much may depend on whether the husband or wife is the disponent, or whether the disponent is a near relative of the wife. For example, under destinations to spouses in conjunct fee and liferent, the husband is ordinarily presumed to be fiar; but if the property originally comes from or through the wife or her relations, and is not in name of tocher, the wife is fiar, and the husband's right is only a liferent. Again, where property coming from a third party is destined to spouses in conjunct fee and liferent and *their heirs*, the husband is fiar, on the ground that his heirs are more favoured. On the other hand, a destination to A and B (spouses) in conjunct fee and liferent *and to the heirs of B (the wife)*, gives the fee to B, from the fact that her heirs are specifically favoured, unless, of course, the estate was granted as tocher, in which case the fee would belong to A.

Destinations to husband and wife in conjunct fee and liferent *and the survivor of them and their heirs*, give the fee to the survivor, irrespective of which of them originally brought in the property; but if the ultimate destination is to *the heirs of the marriage*, the fee remains in the spouse who had it during marriage.

We now give a few of the simplest examples here:—

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| 1. To A and B in conjunct fee and liferent (and their heirs).  | A is fiar; but B (the wife) has a liferent if she survives.  |
| 2. To A and B in conjunct fee and liferent and the heirs of their marriage (or and the heirs of their bodies).                                 | That spouse is fiar who had the fee during the subsistence of the marriage; i.e., the fee is determined by tracing the source of the property. |
| 3. To A and B in conjunct fee.   | A and B are joint fiars.   |
| 4. To A and B in conjunct fee, and to the survivor of them in fee.   | The fee vests in the spouses jointly, with benefit of survivorship. (See <i>Walker v. Galbraith</i> , 1895, 23 R. 347.)                        |
| 5. To A and B in liferent, and to the heirs of the marriage, whom failing to the heirs of B in fee (or with power to B to burden and dispone). | B is fiar.   |

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| 6. To A and B in conjunct fee and liferent for their liferent use allenary, and to the children of the marriage in fee.                | A and B have a liferent, but hold fiduciary fee for the children.                      |
| 7. To A and B in conjunct liferent, and the survivor of them and their heirs or assignees in fee.                                      | The survivor of A and B is <i>fiar</i> . (See <i>Walker v. Galbraith, supra cit.</i> ) |
| 8. To A and B and the survivor of them and their heirs, executors, or assignees ( <i>or</i> and their heirs and assignees whomsoever). |  |
| 9. To A and B in conjunct fee and liferent, and to the survivor and their heirs, assignees, or disponees whomsoever.                   |  |

### 3. DESTINATIONS TO PARENTS AND CHILDREN.

The general presumption here is that the fee is in the parent, and that the children are merely substitutes. Where a liferent is given to a parent and the fee to unnamed children whether born or unborn, the fee notwithstanding is in the parent, but if the children are specifically called *nominatim*, the fee is in the children and the parent merely has a liferent. A destination simply *to a parent and to his child (whether nominatim or not) in fee*, gives the fee to the parent, on the ground that unless there is anything to show the contrary in the deed, the child must be held to be a mere substitute to and not a joint disponee with the parent. Important questions as to vesting arise in connection with destinations to parents in liferent allenary and to the children, issue, or heirs of the marriage in fee. These can hardly be dealt with in detail here, but reference can be made to Mr. Craigie's "Scottish Law of Conveyancing (Heritable Rights)," and to Mr. Candlish Henderson's "Law of Vesting."

We now give a few simple examples :—

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| 1. To A and his children ( <i>or</i> and his child B).   | A is <i>fiar</i> ; the children being deemed substitutes, not joint disponees.   |
| 2. To A in liferent, and his children ( <i>or</i> his heirs to be procreated of his body, <i>or</i> to the heirs male of his marriage) in fee. | A is <i>fiar</i> .   |
| 3. To A in liferent, and his son B in fee.   | B is <i>fiar</i> , burdened with A's liferent.   |
| 4. To A in liferent, and his children B and C in fee, and any other children to be born to A.  | B and C are joint <i>fiars</i> for themselves with a fiduciary fee for any other children who may be born to A, all burdened with A's liferent.      |
| 5. To A in liferent allenary and to the heirs of his body ( <i>or</i> heirs male, <i>or</i> heirs female).                                     | A is merely a liferenter holding a fiduciary fee for the heirs called, these falling to be ascertained on A's death, when alone vesting takes place. |

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| 6. To A in liferent allienarly and his children ( <i>or</i> issue) in fee.                    | A is liferenter with a fiduciary fee for his children, in whom vesting takes place as they come into existence. The difference as to vesting between this destination and No. 5 arises from the fact that an "heir" cannot be ascertained until the death of the fiduciary fiar. |
| 7. To A in liferent allienarly and his children, or the survivors or survivor of them in fee. | A is liferenter with a fiduciary fee for his children who survive him, vesting being postponed till his death.   |
| 8. To A in liferent and the children of B in fee.   | A has merely a liferent, B's children becoming fiars as they come into existence.  |

#### IV.—VARIATIONS WITH RESPECT TO THE SUBJECT DISPONED.

1. Land.
2. Feu-Duties or a Superiority.
3. Tenement of Houses.
4. Flat in Tenement of Houses.
5. Flatted Villa.
6. Villa.
7. Wayleave.
8. Water Rights.
9. Minerals.
10. Teinds.
11. Fishings.
12. Leases.

We give a series of typical descriptions, &c., which may be modified according to circumstances.

##### (1.) *Land.*

ALL AND WHOLE the lands and estate of \_\_\_\_\_, in the Parish of \_\_\_\_\_ and County of \_\_\_\_\_, comprehending the farms and possessions known as \_\_\_\_\_, with the mansion-house, policy, and gardens situated thereon: Together also with the teinds, parsonage, and vicarage, and the whole other parts, pendicles, and pertinents of the same.

ALL AND WHOLE the following subjects in the Parish of \_\_\_\_\_ and County of \_\_\_\_\_, namely (*first*) the lands of \_\_\_\_\_ (*describe fully*), and (*second*) the lands of \_\_\_\_\_ (*describe fully*), which whole lands hereinbefore described shall, it is hereby declared, be designed and known in future by the one general name of the lands of \_\_\_\_\_.

(2.) *Feu-Duties or a Superiority.*

ALL AND WHOLE the following subjects and others situated in the Parish of \_\_\_\_\_ and County of \_\_\_\_\_, from which the feu-duties after mentioned are payable to me, namely (1) ALL AND WHOLE the lands of \_\_\_\_\_, from which a feu-duty of \_\_\_\_\_ is payable; (2) ALL AND WHOLE that tenement of land with the houses and other buildings thereon situated at No. \_\_\_\_\_ Street, &c., from which a feu-duty of \_\_\_\_\_ is payable, &c.

(3.) *Tenement of Houses.*

ALL AND WHOLE that piece of ground, extending to \_\_\_\_\_ square yards or thereby, in the Parish of \_\_\_\_\_ and County of \_\_\_\_\_, bounded on the north, &c. (*give boundaries with measurements if desired*): Together with the tenement of shops and dwelling-houses forming Nos. \_\_\_\_\_ Street, and walls or railings enclosing the same, and the whole parts, pendicles, and pertinents thereof.

(4.) *Flat in Tenement of Houses.*

ALL AND WHOLE that house entering by the common stair, No. \_\_\_\_\_ Street, in the County and City of \_\_\_\_\_, being the \_\_\_\_\_ most house on the \_\_\_\_\_ flat of the tenement forming Nos. \_\_\_\_\_, and \_\_\_\_\_ Street: Together with (1) right in common with the other proprietors of said tenement to the solum on which same with the back green and front plot attached thereto are situated; (2) right in common with the other proprietors of said tenement to the back green, which shall be used exclusively for drying and bleaching clothes; (3) the common passage and stair in said tenement with right of access thereby to said house, and the roof and chimney tops of said tenement for the purpose of cleaning vents, and for all other necessary purposes; (4) a right in common with the other proprietors to the drain, soil, and other pipes of said tenement and access thereto when necessary; and (5) the whole other rights, common and mutual to the proprietors of said tenement, and whole other parts, privileges, and pertinents hereby disposed, with the whole fittings and fixtures in said house, and my whole right, title, and interest, present and

future, in and to the same: Declaring always that the proportion of the *cumulo* feu-duty applicable to said tenement allocated upon the subjects hereby disposed is , with corresponding duplications, interest, and penalty; as also that the share of all repairs upon mutual property shall be allocated and divided according to feu-duty.

(5.) *Flatted Villa.*

ALL AND WHOLE that dwelling-house, being the upper flat of the tenement counting from the facing the street of , with the back green attached, which dwelling-house forms No. , in the County of , and which tenement with the front and back plots attached is bounded, &c.

(6.) *Villa.*

ALL AND WHOLE that self-contained dwelling-house consisting of rooms, &c., with the front plot and back green attached, forming No. in County of , bounded on the north, &c. (*description and measurements*): Together with the solum on which said subjects are situated, and the whole parts, pendicles, and pertinents thereof, all lying in the Parish of and County of of .

(7.) *Wayleave.*

ALL AND WHOLE a heritable and irredeemable right of servitude and wayleave for pipe track (*or otherwise as may be required*), feet broad, in and over the lands of in the Parish of and County of , upon the line laid down and delineated upon the plan annexed, and signed as relative hereto, with right of access thereto for all usual and necessary purposes on payment of surface damages as the same may be estimated by arbiters mutually chosen for that purpose.

(8.) *Water Rights.*

ALL AND WHOLE the springs marked on the plan annexed, and signed as relative hereto, situated in the Parish of and County of , with right to collect and lead away the water therefrom, and to construct such tanks, pipes, or

otherwise as may be required for that purpose, but always so as not to interfere with the free use of the surface of the ground.

(9.) *Minerals.*

ALL AND WHOLE the whole seams of coal, shale, iron, stone, clay, and other mines and minerals under the surface of the ground in the lands and estate of \_\_\_\_\_, in the County of \_\_\_\_\_, with full right to dig, search for, mine, excavate, and win and carry away the same and for that purpose, with right to open shafts and put down mines, and to let down and alter the level of the surface on paying compensation to the possessors and owners thereof for all damage that may be occasioned by the working of said minerals and taking away the same.

(10.) *Teinds.*

Where the teinds are in the hands of a titular, if the heritor insists on a sale, the titular (with certain minor exceptions) is obliged to sell at nine years' purchase. Where there is no titular, the patron, who has right to the teinds under the Act of 1690, c. 23, is obliged to sell at six years' purchase; and for this purpose the heritor may obtain decret of sale ordaining the titular or patron to denude. The sale may also be a voluntary one. Bishops' teinds in the hands of the Crown are exempt from these conditions, but otherwise the Crown is subject to the same conditions as an ordinary lay patron or titular. The following forms may be used in the respective cases:—

*Disposition of Teinds, following on a Decree of Valuation and Sale  
by the Lords Commissioners.*

I, A (*designation*), titular of the teinds after disposed, CONSIDERING that B (*designation*) upon the \_\_\_\_\_ day of \_\_\_\_\_ obtained Decree of Valuation at his instance before the Lords of Council and Session, as Commissioners appointed for plantation of kirks and valuation of teinds, against me and others (*or as the case may be*), finding and declaring the just worth and constant yearly avail of the teinds, parsonage, and vicarage, of his lands after specified to be £ \_\_\_\_\_ sterling, as the said Decree of Valuation in itself more fully bears; and that the said B on the \_\_\_\_\_ day of \_\_\_\_\_ obtained a Decree of Sale of the said teinds before the said Lords, as Commissioners foresaid, against me, decerning and ordaining me to

denude myself, my heirs and successors, of all right, title, and interest which I had or could claim or pretend to the teinds, parsonage and vicarage, of the said lands, in favour of him, the said B, his heirs and assignees, heritably and irredeemably, for nine years' purchase; and to subscribe and deliver to him and his foresaids valid and sufficient rights thereof; and declaring him to have good and undoubted right to the parsonage and vicarage teinds of the said lands, and his entry thereto to be at the term of                      for the crop of                      ; and, on the other part, decerning and ordaining him and his foresaids to make payment to me, in terms of the Act of Parliament thereanent, of the sum of £                      sterling, being nine years' purchase of the said valued teinds, all as the said Decree of Sale in itself more fully bears: AND SEEING that the said B has instantly made payment to me of the said sum of £                      sterling, and of £                      , being the interest thereof at                      per cent. per annum from the said term of                      to the date of these presents, amounting together said two sums to the sum of £                      sterling, of which I hereby acknowledge the receipt and discharge the said B: THEREFORE I hereby SELL and DISPONE to the said B and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE the teinds, parsonage, and vicarage, of the lands of C (*here describe or validly refer to the lands, stating the parish and county in which these are situated*), together with all my right, title, and interest, present and future, therein; but always with and under the burden of minister's stipend now payable out of the said teinds, and all future augmentations thereof, and all other burdens imposed or to be imposed thereon in virtue of any law presently existing or hereafter to be enacted: WITH ENTRY at the term of                      notwithstanding the date hereof: AND I assign the writs, and bind myself and my foresaids to make the same furthcoming to the said B and his foresaids on all necessary occasions, conform to Inventory thereof annexed and subscribed by me as relative hereto, and that on a receipt and obligation to redeliver the same within a reasonable time and under a suitable penalty: AND I bind myself to free and relieve the said B and his foresaids of all feu-duties, casualties, and public burdens: AND I grant warrandice, but only to the extent of the price above mentioned; and excepting from said warrandice the minister's stipends, and all future augmentations thereof, and all other burdens imposed or to be imposed on the

Dispositive clause.

Entry.

Assignment of writs.

Clause of relief from feu-duties, &amp;c.

Warrandice.

Consent to registration. said teinds as aforesaid: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

*Voluntary Disposition of Teinds by the Titular.*

I, A (*designation*), titular and heritable proprietor of the teinds after disposed, IN CONSIDERATION of the sum of £                      sterling instantly (*or as the case may be*) paid to me by B (*designation*) as the price thereof, of which sum I hereby acknowledge the receipt and discharge him, DO hereby SELL and DISPONE to the said B and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE the teinds, parsonage and vicarage of the lands of C (*here describe or validly refer to the subjects, and add the further clauses necessary, as shown in preceding example*).

(11.) *Fishings.*

ALL AND WHOLE the salmon fishings and other fishings on the coast *ex adverso* of the lands of                      and in the river                      , so far as passing through or bounding said lands in the Parish of                      and County of                      .

(12.) *Leases.*

There are certain *quasi-feudal* rights connected with land which do not require sasine unless this has been employed in their original constitution. Of these the most important instances are Leases as well as Teinds and Fishings. An ordinary lease for a short period, either of a house or of a farm or of some other heritable subject, is transferred by assignation. Leases, however, for thirty-one years or upwards can be recorded, and thereafter transmissions require to be completed in terms of the Registration of Leases (Scotland) Act, 1857. See Title VIII., *infra*.

V.—VARIATIONS ARISING FROM THE CONSTITUTION OF REAL BURDENS.

The most frequent of these is the burden of some part of the price remaining unpaid at delivery of the disposition. The narrative clause in such case will run thus :—

I, A (*designation*), heritable proprietor of the subjects hereinafter disposed, IN CONSIDERATION of the sum of £                      sterling instantly

paid to me by B (*designation*), whereof I hereby acknowledge the receipt, AND ALSO IN CONSIDERATION of the further sum of £ sterling herein declared to be a real burden upon and affecting the said subjects, and which sums of £ and £ , amounting together to £ sterling, make up the agreed-on price of the said subjects, DO hereby SELL and DISPONE to the said B, heritably and irredeemably, but always with and under the real burden in my favour (*or* in favour of X), hereinafter expressed ALL AND WHOLE, &c.

The burdening clause, which, as already observed, immediately follows the description of the subjects, may be expressed in these words:—

DECLARING ALWAYS, as it is hereby expressly PROVIDED and Burdening clause. DECLARED, that the subjects hereinbefore described (*or* referred to) are disposed under the real burden of the foresaid sum of £ sterling, being that part of the price thereof remaining unpaid as before narrated, interest thereof at the rate of per centum per annum from the term of during the not-payment, and a fifth part more of the said principal sum of liquidate penalty in case of failure in punctual payment to me, my executors (*or* my heirs, excluding executors, *as the case may be*) or assignees whomsoever, at the term of , all conform to Bond of this date granted by the said B to me therefor: AND WHICH SUM of £ sterling, interest and penalty as aforesaid, are hereby declared a real and preferable burden upon the subjects hereby disposed, and are appointed to be inserted in any notarial or other instrument to follow hereon, and to be inserted or validly referred to in all future deeds of transmission, decrees, instruments, and other writs of or relating to the said subjects or any part thereof, so long as the said burden or any part thereof shall remain unpaid, otherwise such deeds, decrees, instruments, and writs shall be void and null: WITH ENTRY at the term of , &c.

It may be that the real burden is not constituted in favour of the seller of the subjects, but of a third party. In this case the introductory clause will not differ from that in an ordinary disposition, but the burdening clause will run thus:—

DECLARING ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that the subjects hereinbefore described are disposed under the real burden in favour of C (*designation*) and his

executors or assignees (*or as the case may be*), of the sum of £                    sterling, being part of the price of said subjects advanced by him to the said B of even date with the delivery of these presents, with interest thereof at the rate of                    per centum per annum from the term of                    during the not-payment, and a fifth part more of the said principal sum of liquidate penalty in case of failure in punctual payment to the said C, his executors (*or as the case may be*) or assignees whomsoever, at the term of                    , all conform to Bond granted of this date by the said B in favour of the said C.

The burden is made a heritable security affecting the property when it enters the record as part of the disposition, but the loan and obligation to repay are expressed in a separate personal bond by the borrower. Where at all possible the simpler form of constituting the heritable security by a bond and disposition in security should be adopted.

If the burden to be imposed on the lands is an old debt, and has already been engrossed in a recorded instrument or deed containing the lands, it may be referred to at the end of the dispositive clause as follows:—

Reference  
to existing  
real burden.

BUT ALWAYS with and under the real burden specified in a Disposition of the said subjects granted by D (*designation*) in favour of C (*designation*), dated                    , and recorded in the (*specify Register of Sasines and date of recording*), (*or in an Instrument of Sasine, or Notarial Instrument*), in favour of                    , in the said subjects, recorded in the (*specify Register of Sasines and date of recording (a)*); (*where the other deed is recorded of the same date, the clause proceeds*)—recorded in (*specify Register of Sasines*) of even date with the recording of these presents.

Lands are also frequently found to be burdened with liferents or annuities. The constitution of such burdens, however, may generally be traced, not to a disposition to a purchaser, but to a family settlement; and therefore we need not be more particular here. In what form the interest of the purchaser is to be guarded against such burdens has already been shown in treating of the minute of sale.

Before leaving this subject we may remark that the transmission and extinction of real burdens, and the completion of titles to them, is now regulated by section 30 of "The Conveyancing (Scotland) Act, 1874," which enacts that the forms used are to be as nearly as may be those used in the case of heritable securities, which are treated in the seventh title of this work.

Where the subjects disposed are part of larger subjects for which a

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(a) It will be kept in view that in the conveyance or instrument referred to the real burden must be set forth at length.

*cumulo* feu-duty is payable, it is usual to allocate on the part so disposed a proportion of the feu-duty. This, of course, does not affect the rights of the superior unless and until sanctioned by him. The allocation is usually expressed by a clause inserted immediately before the date of entry, and after the reference to the existing burdens, conditions, &c., under which the lands are held in virtue of previous investitures, thus:—

AND also with and under the burden of payment by my said <sup>Allocation of feu-duty.</sup> disponent and his foresaids of the sum of £                      yearly of feu-duty, being the proportion hereby allocated on the subjects before disposed of the *cumulo* feu-duty of £                      payable to my superiors for the whole subjects before described (*or* referred to), of which those hereby disposed form part, with corresponding duplication every                      year (*if any*), and interest and penalties if incurred.

Occasionally the disponent becomes bound to relieve the granter and his successors in the portion of the larger subjects retained or previously conveyed away, of the whole of the *cumulo* feu-duty. In such a case the obligation of relief is usually declared a real burden on the subjects disposed, and the clause may be expressed as follows:—

BUT DECLARING always that the said B by acceptance hereof shall be bound, as he hereby binds himself and his foresaids, to free and relieve me and my heirs, executors, and successors in the remainder of the whole subjects before described (*or* referred to), of which those hereby disposed form part, of the *cumulo* feu-duty of £                      payable to my superiors for said whole subjects, duplication thereof every                      year (*if any*), and interest and penalties if incurred; which *cumulo* feu-duty, duplication (*if any*), interest, and penalties as aforesaid, and obligation for relief thereof, are accordingly hereby declared and created real burdens upon and affecting the subjects hereby disposed in favour of me and my foresaids, and as such shall be recorded as part of these presents, and inserted at length in any notarial or other instrument to follow hereon, and also inserted or validly referred to in all future deeds of transmission, decrees, instruments, and other writs of or relating to the said subjects or any parts thereof, under pain of nullity.

#### VI.—VARIATIONS IN THE CLAUSE OF ASSIGNATION OF WRITS, &c.

The statutory clause of assignation of writs and evidents, contained in Schedule (B), Nos. 1 and 2, annexed to the Consolidation Act of 1868, as interpreted in section 8 of that Act, imports, unless specially qualified,

an absolute and unconditional assignation to such writs and evidents, and to all open procuratories, clauses, and precepts, if any, and as the case may be, therein contained, and to all unrecorded conveyances to which the disponent has right. If, therefore, this right is not to be conferred to its full extent, the clause must be modified.

Where  
titles not  
delivered  
by seller.

It often happens that the subjects sold is only a part of a more valuable estate. In that case, as the titles themselves will be retained by the seller, the disposition will contain an obligation on the seller to make them furthcoming, in these terms :—

AND in respect that the title-deeds of the said subjects contain other subjects of greater value than those hereinbefore disposed, and so cannot be delivered up, I hereby oblige myself and my successors to make the same furthcoming to the said B and his foresaids on all necessary occasions (*if per inventory*, conform to inventory annexed and subscribed by me as relative hereto), and that on a receipt and obligation to redeliver the same within a reasonable time and under a suitable penalty.

If it is desired to make the obligation still more precise, the following may be added :—

AND I oblige myself and my foresaids to take any person to whom I may deliver up the said writs bound to make the same furthcoming in like manner.

Of course this latter obligation will require to be carefully borne in mind in preparing future conveyances relating to any portion of the *cumulo* subjects.

Where  
estates sold  
in lots.

Or it may happen that an estate is sold in lots, in which case it will be necessary to insert in the conveyance to the purchaser of the largest lot, to whom the titles are delivered up, an obligation to make them furthcoming to the other purchasers. This declaration may run as follows :—

AND in respect the said writs contain other subjects besides those now disposed to the said B, the said B and his foresaids shall, by acceptance hereof, be bound to make the same furthcoming to the proprietors for the time being of the said other subjects on all necessary occasions, on a receipt and obligation to redeliver the same within a reasonable time and under a suitable penalty.

It may happen that the houses in a tenement are sold by the builder separately, in which case it is wise to specify the particular house to the owner of which the common writs of the tenement are to be or have been delivered under obligation to make them furthcoming to the others interested, and the clause in his disposition will correlatively place him under that obligation.

When the disponent is not in possession of the titles, but holds obligations for delivery of them, the clause may run thus :—

Where seller not in possession of titles.

AND I assign the writs, conform to inventory thereof annexed and subscribed by me as relative hereto, and in respect the same are not in my possession, I assign to the said B and his foresaids all obligations in the titles in favour of me or my authors to have the said writs made furthcoming.

If only some of the titles are in the disponent's possession, and are delivered, the cause may be modified thus :—

AND I assign the writs, and have delivered the same conform to inventory thereof annexed and subscribed by me as relative hereto, except Nos.                      and                      of said inventory, which are not in my possession, but in regard to which I assign to the said B and his foresaids all obligations in the titles in favour of me or my authors to have the same made furthcoming.

If for any reasons the principal copies of certain deeds, such as family settlements, cannot be delivered up, the seller frequently binds himself to record these in the Books of Council and Session or other competent record within a given time, and to deliver valid and sufficient extracts to the purchaser. This obligation may likewise be undertaken by separate letters handed to the purchaser with the disposition, and where there is anything in its terms unusual or unsuited to the disposition, this is probably the preferable course.

Obligation to record deeds and deliver extracts.

Where the previous writs contain special obligations of relief, *e.g.*, from public or parochial burdens, such obligations, if they are to be transmitted to the purchaser, must, as we have already remarked when treating of the feu-charter, be expressly assigned. This should be done either in the form of an addition to the assignation of writs, or by separate deed in terms of Schedule (M) of the Conveyancing Act of 1874.

Where writs contain special obligations of relief.

## VII.—VARIATIONS IN THE CLAUSE OF WARRANTICE.

The clause "I grant warrantice" is statutory and implies absolute warrantice as regards the lands and writs and evidents, and warrantice from fact and deed as regards the rents. The current leases or missives of lease of the subjects may have to be excepted.

If the disposition convey a right of superiority, the clause will run :—

BUT EXCEPTING ALWAYS from this warrantice the current leases, and all feu and other subaltern rights, if any, of the said subjects, or any portion thereof, made and granted by me, my predecessors or authors without prejudice nevertheless to the right of the said B and

his foresaids to quarrel or impugn the same upon any ground of law that shall not infer warrandice against me and my heirs and successors.

In the case of a superiority the "feu and blench-duties and casualties" of superiority or sums in lieu thereof, due and payable from and after "said term of entry," are assigned in place of "rents."

### SECTION III

#### COMPLETION OF DISPONEE'S TITLE, &c.

Registration of Disposition.

Where the disponent's title has been completed by a duly recorded instrument or conveyance, the disponent may complete his title (1) by recording the disposition in his favour in the appropriate Register of Sasines, with a warrant of registration thereon on his behalf; or (2) he may expedite and record, with a warrant of registration thereon in like manner, a notarial instrument proceeding on the disposition.

Where clause of direction.

Where the conveyance contains a Clause of Direction, the title will be completed either (1) by registration of the portions of the deed directed to be recorded, with a warrant of registration in the form of Schedule (F), No. 2, of the Consolidation Act; or (2) by registration, also with warrant, of a notarial instrument, which must embrace the whole portions of the deed directed to be recorded. In the latter case the warrant of registration will be in the usual terms.

Disposition for religious or educational purposes, or to *ex officio* trustees.

Where heritable property is conveyed or leased, or trusts are created for religious or educational purposes, and the title is taken in favour of office-bearers of, or trustees for, the congregation or society or body of men, or the individual members thereof, it is provided by section 26 of the Consolidation Act of 1868 that such conveyance or lease, when the title is completed in manner therein referred to, shall vest not only the parties therein named, but also their successors in office for the time being, chosen and appointed in manner provided or referred to in such conveyance or lease, or if no mode of appointment be therein prescribed, then in terms of the rules or regulations of such congregation or society or body of men, subject to the like trusts and with and under the same powers and provisions as are contained or referred to in the conveyance or lease, and that without any transmission or renewal of the investiture, and notwithstanding anything to the contrary contained in such conveyance or lease. And it is so by section 45 of the Conveyancing Act of 1874 provided that where by the title to any estate in land held in trust, duly completed and recorded, the office of trustee has been or shall be conferred upon the holder of any place or office, or proprietor of any estate and his successors therein, any person subsequently becoming a trustee by appointment or succession to the place or office or estate to which the office of trustee has thus been or shall be annexed, shall be deemed and taken to have a valid and complete title by infestment in the estate, in the same manner and to the same effect as if he had been named in the completed and recorded

(1) By registration of disposition.

title, without the necessity of any deed of conveyance or other procedure. The term "holder of any place or office" is so vague that the prudent conveyancer will not rely on the expression covering more than some legally recognised office, such as the Minister of the Parish of X. The President of a Trade Society, or the Master of a Freemason Lodge, or a clergyman of a dissenting congregation, do not probably hold office in the sense of the statute.

The warrant of registration will of course be in terms conform to the destination.

In last Title (pp. 40 *et seq.*) we gave the forms of warrant applicable to the registration of an original grant, and as these are equally suited to the case of an ordinary disposition by a party having a real right, it is unnecessary to repeat them here. We therefore merely give examples of the forms of notarial instruments. These forms, it will be understood, are adapted to the styles shown in the preceding pages, and will be subject to such variations as the peculiarities of each case may in actual practice require. (2) By expediting and recording notarial instrument.

### 1. Notarial Instrument proceeding on an Ordinary Disposition.

#### *Schedule (J) of Consolidation Act, 1868.*

This mode of infeftment is rendered competent by section 17 of the Consolidation Act of 1868, where it is not desired to record the whole of the conveyance or other deed. It is also competent even where the conveyance or deed contains a clause of direction, but in such case it is important to keep in view that by section 12 of the same Act "*no part or parts of the conveyance directed to be recorded shall be omitted from such instrument.*" The following form assumes the subjects to have been conveyed to a husband and wife in conjunct fee and liferent, for the liferent use allenary of the wife, and to the heirs and assignees of the husband, and infeftment now to be taken by notarial instrument in their favour:—

AT EDINBURGH, there was on behalf of B (*name and designation*), and C (*full name*), his wife, for their respective rights and interests as after mentioned, presented to me, Notary-Public subscribing, a Disposition (*or other deed, or an Extract of a deed as the case may be*) granted by A (*designation*), and dated (*and if an extract, specify the register in which it is recorded and date of registration*); by which Disposition the said A sold and disposed to and in favour of the said B and C in conjunct fee and liferent, for the liferent use allenary of the said C so long as she should continue a widow after the death of her said husband, but providing that the liferent of the said C should cease and become void and null in case of her entering into another marriage, and to the heirs and assignees whomsoever of

the said B (*or as the terms of the destination may be*), heritably and irredeemably, ALL AND WHOLE (*insert the description of the lands conveyed, and any real burdens, conditions, provisions, and limitations, or refer to the same, all as in the disposition or other deed*): WITH ENTRY at the term of : WHEREUPON this Instrument is taken in the hands of L (*insert name and designation of notary-public*) in the terms of the "Titles to Lands Consolidation (Scotland) Act, 1868."—  
IN WITNESS WHEREOF (*complete testing clause as before shown, p. 43*).

If presented  
by party.

If presented by the husband himself this deed will commence—

AT EDINBURGH, there was by B (*name and designation*), on behalf of himself and of C (*name*), his wife, for their, &c.

For simplification we do not in subsequent forms give the variation requisite where the presentment is made by the party.

## 2. Notarial Instrument proceeding on a Disposition constituting a Real Burden, and on a Discharge of that Burden.

The following form may be adopted where for any reason the disposition constituting the burden has not been recorded, and the burden has meantime been discharged :—

AT EDINBURGH, there was on behalf of B (*designation*) presented to me, Notary-Public subscribing, a Disposition granted by A (*designation*), and dated , by which Disposition the said A sold and disposed to and in favour of the said B and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here insert description of the subjects conveyed, and any reference to previously existing burdens, &c., all as contained in the disposition*): BUT DECLARING ALWAYS, as it was thereby expressly provided and declared, that the subjects above described (*or referred to*) were thereby disposed under the real burden of the sum of £ sterling, being part of the price of said subjects remaining unpaid to the said A as therein narrated, interest thereof at the rate of per centum per annum from , and a fifth part more of penalty in case of failure in punctual payment to the said A, his executors (*or his heirs, excluding executors*) or assignees whomsoever, at the term of , of the said principal sum, all payable conform to Bond granted by the said

B to the said A therefor of even date with said Disposition; and which sum of £                      sterling of principal, interest, and penalty as aforesaid, were by said Disposition declared a real and preferable burden upon and affecting the subjects thereby disposed and hereinbefore described, and were appointed to be inserted in any notarial or other instrument to follow thereon, and to be inserted or validly referred to in all future deeds of transmission, decrees, instruments, and other writs of or relating to the said subjects, or any part thereof, so long as said sum or any portion thereof should remain unpaid, otherwise such deeds, decrees, instruments, and writs should be void and null: AS ALSO there was presented to me a Discharge granted by the said A, and dated                      , whereby the said A, in consideration of the sum of £                      sterling then paid to him by the said B, discharged the said real burden and relative Bond, and all interest due thereon, and declared the said subjects to be freed and disencumbered thereof, all as therein and hereinbefore particularly described (or referred to): WHEREUPON this Instrument is taken in the hands of I, &c. (*complete testing clause as at p. 43*).

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#### SECTION IV

### SUPPLEMENTARY DEEDS CONNECTED WITH THE SUBJECT OF THIS TITLE

#### 1. Disposition of Superiority by an Heir of Entail.

I, A (*designation*), superior of the lands and others after-mentioned, and having right to the superiority thereof as heir of entail infert and in possession, in virtue of a Disposition and Deed of Entail, dated                      , and registered in the Register of Tailzies the                      day of                      , and in the Division of the Register of Sasines applicable to the County of X the                      day of                      , granted by B (*designation*), CONSIDERING that by the Act of Parliament 20 Geo. II. c. 50, it is provided that it shall be lawful to heirs of entail to sell the superiorities over their respective lands to the vassals, provided always that the moneys paid as the price of such superiorities, being part of a tailzied estate, shall be laid out and settled in manner therein mentioned, and for that purpose the same

Narrative  
clause.

shall be paid into the hands of the trustees who shall be appointed by the vendor of such superiority and the purchaser thereof respectively: AND having resolved to sell to C (*designation*) the superiority of the lands of D and others hereinafter specified, holden by him of me; and he having instantly made payment to E and F (*designation*), trustees nominated and appointed by us in terms of the said Act of Parliament, of the sum of £                      sterling as the price of the superiority of the said lands and others, to be applied by the said trustees in manner directed by the foresaid Act of Parliament: THEREFORE I DO hereby SELL and DISPONE to the said C and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here insert description of lands in ordinary form, with all the usual clauses, as on p. 65, care being taken to modify the assignation to feu-duties, &c., and warrandice clauses, as shown on p. 95*).

Dispositive  
clause.

#### DISPOSITIONS BETWEEN SUPERIOR AND VASSAL.

It has already been observed that the same estate may be the subject of separate fees; the property or *dominium utile* being vested in one person, and the superiority or *dominium directum* in another; and that these may pass from one person to another as separate estates. It sometimes happens that they again come to be held by the same person. In consequence, however, of the original subinfeudation, these still remain separate estates in the person of the donee, descendible to different series of heirs, if so destined. In order therefore to unite, or in technical language to *consolidate* them, if that be desired, a certain form is necessary, by which the estate is restored to the condition of an undivided fee, as it stood prior to the subinfeudation.

The proprietor of both fees, after his title to both is recorded, requires simply to execute and record a

### 2. Minute of Consolidation of Property and Superiority.

I, A (*designation*), heritable proprietor both of the immediate superiority and of the property (*or of the mid-superiority*) of ALL AND WHOLE (*describe or refer to the lands*), hereby consolidate the property of the said lands (*or the mid-superiority of the said lands*) with the immediate superiority thereof.—IN WITNESS WHEREOF, &c. (*a*). (*insert testing clause in usual form*).

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(a) It will be remembered that such a minute requires the usual warrant of registration (in this case on behalf of the granter) to be endorsed before being presented for registration.

It appears to be still competent, when the superior is acquiring the property, to obtain and record a disposition containing a clause of resignation *ad remanentiam*, since there appears to be no provision in the Act expressly abolishing the use of such a clause, or even of a separate procuratory. In such case the disposition, except for the addition of this clause, "And I resign the said lands and others *ad perpetuam remanentiam*," which will be inserted immediately before the Assignment of Writs, will be in the ordinary form.

It may in certain circumstances be desirable not to consolidate the property and superiority, as, for example, if it is wished that they should descend to two different series of heirs. In such a case, where the superior acquires the property, the disposition with clause of resignation *ad remanentiam* should not be used, nor should the disposition where it does not contain that clause be followed by a minute of consolidation. Where the vassal acquires the superiority, the minute is equally to be dispensed with. The result of recording the disposition with clause of resignation *ad remanentiam*, or of recording a minute of consolidation, would be to cause the whole to descend to the heirs of the superiority, which is the leading right. Thus, suppose that the property stood destined to *heirs-male*, and the superiority to heirs and assignees *whatsoever*, the whole estate, property, and superiority would after consolidation pass to the heir *whatsoever*, i.e., the *heir-at-law* of the disponent.

Circumstances in which consolidation may not be desirable.

### 3. Contract of Excambion.

IT IS CONTRACTED and AGREED between the parties following, viz., Narrative clause.  
A (*designation*), ON THE ONE PART, and B (*designation*) ON THE OTHER PART, in manner underwritten—THAT IS TO SAY, The said parties, CONSIDERING that their lands of O and P are incommodiously situated, as they lie discontiguous from the other lands belonging to them respectively, have agreed to make the following excambion.(a) THEREFORE the said A DISPONES to the said B and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE the lands of O (*here describe them, with the restrictions or qualifications, if any, as shown in form of Disposition, p. 65*), with all his right, title, and interest, present and future, therein: IN CONSIDERATION whereof (*if the lands excambed are of unequal value, say—*and of the sum of £       sterling instantly paid to the said B by the said A, of which he hereby acknowledges the receipt) the said B DISPONES to the said A, &c. (*in like manner as above*): PROVIDING that if either of the lands Dispositive clause.

Proviso as to eviction.

(a) The narrative will of course vary with circumstances. Thus, it may proceed upon a submission and decret-arbitral; or, if either of the estates excambed is entailed, the decree of a competent Court is necessary to authorise the transaction. In all cases the *res gestæ* should be distinctly stated in the narrative clause.

above disposed, or any part thereof, shall happen to be evicted on account of any fact or deed of the disponent's, or of his predecessors and authors, or of a defect in his title, then and in that case this Contract, and the infestments hereon, shall be void and null; and it shall immediately be competent for the party from whom the lands may happen to be evicted, to recover the possession of the lands exchanged for those so evicted from him, as accords; and the action for that purpose (*if the lands are of unequal value, say—as well as for restitution of the foresaid sum of £* ) shall be competent to as well as against the contracting parties themselves and their respective heirs and successors; but as soon as the action threatening an eviction is commenced, the party whose right is challenged shall be bound to intimate the same to the other party, or at least before the record shall be closed in the cause: AND the said A and B respectively assign the writs (*this clause will be qualified according as the titles are to be delivered or not*): AND the said A and B respectively assign the rents: AND the said A binds himself to free and relieve the said B, and the said B binds himself to free and relieve the said A, of all feu-duties, casualties, and public burdens: AND the said A and B respectively grant warrandice; and they consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

Assignment of writs.

Assignment of rents. Obligations to relieve of burdens.

Warrandice.

Consent to registration.

In place of the preceding form the transaction may be so arranged that each party shall separately dispoise his lands to the other. That form, however, is much more prolix than the one now exhibited, and in the ordinary case possesses no advantage over it.

When the transaction is to be completed by *separate dispositions or unilateral deeds*, the following may serve as a specimen:—

Excambion by separate dispositions.

I, A (*designation*), heritable proprietor of the lands and others after disposed, CONSIDERING that my lands of O, and the lands of P, belonging to B (*designation*), being incommodiously situated, &c. (*as in the foregoing example*), I and the said B have AGREED to excamb the said lands of O and P upon the terms and conditions specified in decret-arbitral, dated , pronounced by C (*designation*), arbiter mutually chosen by us upon a submission to him, dated , which submission and decret-arbitral are registered (*specify register and date of registration*): THEREFORE, in implement of the said decret-arbitral, and IN CONSIDERATION of a Disposition of the

said lands of P to be delivered to me by the said B *simul ac semel* with the delivery to him of these presents, I hereby DISPONE, &c.

This deed proceeds in the terms of an ordinary disposition.

It is proper to remark that, *ex lege* and independent of the express clause above shown, all contracts of excambion imply real warrandice, so as to afford to each of the parties, if the lands disposed to him should afterwards be evicted on account of any act or deed of the disponent, or any defect in his title, a right to revert to the lands originally belonging to him, and to recover possession of them from the proprietor. The parties to an excambion enjoy this privilege as completely as if they were expressly infest in real warrandice in their original properties; but to constitute this sort of warrandice the deed must expressly bear to be an excambion. See Ersk., b. ii. t. 3, s. 28. If this dictum is to be relied on, the right will not be implied when the transaction is completed by separate dispositions. Nor does it seem practicable (as recommended in a former edition) to introduce into these deeds an obligation of *real* warrandice because they are unilateral. A clause of *reversion* applicable to the case of eviction might possibly be effectual; but we would recommend the Contract as the proper form of carrying out an excambion.

#### 4. Contract of Ground-Annual.

The contract of ground-annual, now so largely used in modern practice as to be only second in importance to the feu-contract, originated in transactions by which lands were agreed to be sold in return for an annual payment instead of a capital sum, and where, in consequence of the subjects of sale being held by burgage tenure, or under strict prohibitions against subinfeudation, it was incompetent to secure the seller in such annual payment by the usual method of constituting feu-rights. The Conveyancing Act of 1874 has materially altered the circumstances which gave rise to such contracts (1) by declaring that the prohibition to subfeu shall in future be null and void except in the cases where such prohibition has been imposed before the commencement of that Act (1st October 1874); and (2) by abolishing the burgage tenure, and allowing all lands so held to be dealt with in precisely the same manner as feu-holdings. Many properties, however, are meantime held under effectual prohibitions against subfeu, and the proprietor can therefore secure himself in a perpetual annual payment only by contracts of ground-annual, or by long leases renewable *ad infinitum*. Leasehold is, however, a tenure not much in use in large towns in Scotland, and accordingly the conveyancer may still have occasion frequently to resort to the contract of ground-annual.

The style of such contracts has now been moulded into a well-recognised shape, and in many respects resembles that of the feu-contract, to which it has been assimilated. Thus both deeds provide for the payment of a fixed yearly return to the disponent, and for which the lands are liable; and the same general conditions as to irritancy *ob non solutum canonem*, servitudes, nuisances, &c., are contained in both. But in principle the object and effect of the two deeds are perfectly distinct. By the feu

Origin of  
contract of  
ground-  
annual.

Its present  
form and  
effect.

contract an annual return from land is sought to be secured by the *reservation of an intermediate feudal superiority*. The object of the contract of ground-annual is to secure a similar yearly return by burdening the infetment of the disponee *without creating a new fee*. The feu-contract is employed where there is no obstacle to the reservation of a permanent mid-superiority; the contract of ground-annual is resorted to when the creation of a subaltern right is conventionally prohibited or practically inexpedient. The yearly return in the one case is a proper feu-duty, not dependent upon publication in the register; in the other it is a real burden merely, and to be effectual must be duly published.

In the complete form now universally adopted in professional practice, the contract of ground-annual consists of the following parts:—

- Clauses.
- I. The narrative or inductive clause, containing the names and designations of the parties, and the cause of granting.
  - II. The disposition by the seller, containing—
    - (1) The dispositive clause, including the destination, description of the subjects, reference to any real burdens, &c., under which the subjects may be held in virtue of prior investitures, constitution of the real burden of the ground-annual, irritant clause, and all additional conditions, restrictions, &c., under which the subjects are in future to be possessed.
    - (2) Date of entry.
    - (3) Assignment of writs.
    - (4) Assignment of rents.
    - (5) Obligation to relieve of public burdens up to the date of entry.
    - (6) Clause of warrandice.
  - III. (1) Obligation by the purchaser to pay the ground-annual and to perform the other conditions of the grant.
    - (2) Disposition in security of the preceding obligation, of a ground-annual furth of the subjects, and of the subjects themselves in security of such ground-annual.
    - (3) Assignment of writs.
    - (4) Assignment of rents.
    - (5) Clause of warrandice.
  - IV. Mutual consent to registration for preservation and execution.
  - V. Testing clause.

The following is an example of a contract embodying the above clauses, and containing only such conditions as usually enter into all such transactions, and are considered essential to the security of the ground-annual. Other conditions which the variation of the circumstances may require, the conveyancer will find no difficulty in supplying from the examples given in treating of the feu-contract.

## Contract of Ground-Annual.

IT is CONTRACTED and AGREED between A (*designation*), heritable proprietor of the area of ground hereinafter disposed, OF THE FIRST PART, and B (*designation*) OF THE SECOND PART, in manner following, viz.—The said A IN CONSIDERATION of the ground-annual and other prestations hereinafter undertaken by the said B, has sold, and hereby SELLS and DISPONES, to and in favour of the said B and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE that area of ground (*here describe the ground disposed, and if it be only part of larger subjects belonging to A, add—which area of ground is part of All and Whole, &c.—here describe or validly refer to A's whole subjects*), with the pertinents of said area of ground hereby disposed, and the said A's whole right, title, and interest, present and future, therein (*if the subjects of which the area of ground is part are held by A under reservations, burdens, conditions, &c., already constituted by a duly recorded deed, refer to these in terms of Schedule D of the Consolidation Act of 1868*): AND DECLARING that these presents are granted, and the foresaid area of ground is disposed, with and under the real and preferable lien and burden of the payment by the said B and his foresaids [of First, to the superiors of said subjects the sum of £                    sterling with interest, duplicands, and others, corresponding thereto, being the proportion of the *cumulo* feu-duty of £                    hereby allocated thereon, and Second] to the said A and his heirs and assignees whomsoever of the yearly ground-annual of £                    sterling, to be uplifted and taken by the said A and his foresaids furth of and from the area of ground before disposed, and whole houses and buildings erected or to be erected thereon, or furth of any part or portion thereof, and readiest rents, maills, and duties of the same, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the term of                    for the half-year preceding, and the next payment at                    thereafter, and so forth, continuing in the regular and punctual payment of the said yearly ground-annual at the said two terms of Whitsunday and Martinmas in all time coming, with a fifth part more of each of said termly payments in name of liquidate penalty in case of failure, and the interest thereof at the rate of                    pounds per centum per annum from and after the respective

1. Narrative clause.

2. Disposition by seller. Dispositive clause.

Ground-annual.

terms of payment of the same until paid: AND PAYING the further sum of £                      at the term of                      in the year                      , and at the same term in every                      year thereafter, in name of

Grassum or duplication.

grassum, and that over and above the ground-annual of the year in which the same shall become payable, with interest and liquidate penalty in case of failure in the punctual payment thereof, all as provided with reference to the termly payments of said ground-annual: AND DECLARING FURTHER that the said area of ground is hereby disposed to the said B and his foresaids with and under the

Conditions.

(1) To repay cost of streets and sewers.

following additional burdens, declarations, conditions, obligations, and others, viz.—(*First*) The said B and his foresaids shall be bound to repay to the said A and his foresaids a proportionate part of the sums which may have been or may yet be expended by them in the formation of the street (*or* streets) fronting the area of ground hereby disposed, and the common sewers therein, corresponding to the frontage (*or* frontages) of the area of ground hereby disposed along the said street (*or* respective streets); and the said B shall be bound, jointly with the other parties interested therein, to maintain the said street (*or* streets) and sewers in good repair in all time coming:

(2) To erect buildings.

(*Second*) The said B and his foresaids shall be bound, so far as not already done, to erect within                      months of the date of his entry, upon the said area of ground hereby disposed, good and substantial buildings, which shall be of stone and slated, and according to plans to be submitted to and approved of by the said A or his foresaids; and the said buildings so to be erected shall be capable of yielding a yearly rent of at least double the amount of the foresaid yearly ground-annual; and the said B and his foresaids shall be bound to maintain and uphold the said buildings in such good order and repair as will make them yield the foresaid rent in all time coming: (*Third*) That the said B and his foresaids shall be bound

(3) To insure the buildings against fire.

and obliged to keep the said buildings erected on the piece of ground hereby disposed, or which may hereafter be erected thereon, constantly and adequately insured against loss by fire, with a responsible insurance company, to the satisfaction and in the name of the said A and his foresaids, and regularly to pay the premiums of insurance thereon and report discharges thereof to the said A and his foresaids as the same fall due; and in the event of the buildings on said piece of ground being destroyed by fire, then the sum or sums which may be received under the insurances to be effected as

aforesaid shall be retained and applied at the sight of the said A and his foresaids, either towards the erection of new buildings on the said piece of ground in place of those which may be so destroyed, or in repairing the injury which said buildings may have sustained; and in the event of the said B and his foresaids refusing or failing to insure the said buildings in manner foresaid, or to pay the premiums upon the said insurance regularly as the same become due, it shall be in the power of the said A and his foresaids to insure the said several buildings in their own names at the expense of the said B and his foresaids, and to advance the premiums of the said insurance, the said premiums so to be advanced being always, with the interest thereof at the rate of                      per centum per annum, to be repaid by the said B and his foresaids: AND FURTHER DECLARING that in the event of the said B and his foresaids at any time allowing two years' payment of the said ground-annual to be resting-owing and unpaid, or in the event of their failing to erect and maintain buildings on the ground sufficient for securing the said ground-annual in the manner before mentioned, or of their failing to keep the said buildings constantly insured as aforesaid, or to pay the premiums on the said insurance, then and in any of these cases this Contract of Ground-Annual and all following thereon shall, in the option of the said A or his foresaids, become void and null, and the said area of ground shall, with the buildings thereon, revert and belong to the said A and his foresaids: WHICH irritancies shall nevertheless always be purgeable before declarator or at the Bar, but only on payment of all expenses, both judicial and extra-judicial, which may have been incurred by the said A and his foresaids: AND which ground-annual or grassum, interest, and consequents, and the whole sums which may be advanced by the said A and his foresaids in effecting the foresaid insurance, and in paying the premiums thereon as aforesaid (but declaring that in the event of the said B or his foresaids assigning or disposing the said area of ground, the personal obligation undertaken by him for payment of the said ground-annual, grassum, premiums of insurance, interest, penalties, and others, shall subsist against him and his foresaids until, and only until, buildings shall be erected on the said area of ground above disposed, in terms of the obligation to that effect before written, any law or practice to the contrary notwithstanding), and the whole burdens, declarations, conditions, obligations, and others before written, shall be and are hereby created and declared to

Irritant and  
resolutive  
clause.

be real liens and burdens upon and affecting the area of ground above disposed, and buildings erected or to be erected thereon, and as such are along with the present clause appointed to be recorded in the Register of Sasines as a part of these presents, and inserted or validly referred to in all the future conveyances and investitures of the said piece of ground, otherwise these presents and all following thereon, and the said conveyances and investitures and all following thereon, shall be null and void, and the said piece of ground and buildings thereon shall revert, return, and belong to the said A and his fore-saids in the same manner as if these presents had never been granted :

Date of  
entry.

Assignment  
of writs.

WITH ENTRY at the term of : AND the said A assigns the writs, conform to inventory annexed and subscribed by the parties as relative hereto, but in respect they form the title to other subjects belonging to the said A of greater value than those hereby disposed, the same are not delivered, the said A being bound, as he hereby binds himself and his foresaids, to make the same furthcoming to the said B and his foresaids, at their expense, on all necessary occasions, on receipt and obligation for redelivery thereof within a reasonable

Assignment  
of rents.

Obligation  
to relieve of  
burdens,  
&c.

Warrandice.

3. Obliga-  
tion by  
purchaser  
for payment  
of ground-  
annual, &c.

time and under a suitable penalty : AND the said A assigns the rents : AND he binds himself to free and relieve the said B and his foresaids of all feu-duties, casualties, and public burdens : AND the said A grants warrandice : FOR WHICH CAUSES, and ON THE OTHER PART, the said B BINDS himself and his foresaids TO MAKE PAYMENT [not only of said feu-duty and others but also] to the said A and his foresaids of the foresaid ground-annual of £

Disposition  
in security  
of the  
ground-  
annual.

sterling for the said area of ground, payable at the terms, and with grassums, interest, and penalties all as before specified, and to perform the whole other prestations, conditions, and obligations incumbent on him and his foresaids under these presents : AND FOR FURTHER SECURITY to the said A and his foresaids of the payment of the said ground-annual, grassums, interest, and consequents before specified, and performance of the said prestations, obligations, and conditions effeiring thereto, the said B, without prejudice to, but in corroboration of, the right of the said A and his foresaids, in virtue of the burdens and provisions under which the said area of ground is disposed, and of the above-written personal obligation, hereby ASSIGNS, DISPONES, and MAKES OVER to and in favour of the said A and his foresaids, not only ALL AND WHOLE a yearly ground-annual of £ sterling, to be paid to and uplifted by him and his foresaids furth of and from ALL AND

WHOLE the area of ground above disposed, and buildings erected or to be erected thereon, and that at the terms, and with grassums, interest, and penalties all as before specified, but also ALL AND WHOLE the said area of ground, and buildings erected or to be erected thereon, bounded and described as aforesaid, and whole rents, maills, and duties thereof, but always with and under the whole reservations, burdens, conditions, and others hereinbefore referred to, or at length set forth, and that in real security to the said A and his foresaids of the payment of the said yearly ground-annual, half-yearly payments thereof, grassums, interest, and penalties all as before mentioned, and of the performance of the obligations and prestations applicable thereto, in so far as incumbent on the said B and his foresaids by these presents; AND the said B assigns the writs: AND he assigns the rents in security as aforesaid: AND he grants warrandice: AND both parties hereto consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

Assignment of writs.  
Assignment of rents.  
Warrandice.  
4. Consent to registration.

A contract in the above form is usually recorded in the Register of Sasines with two warrants—one on behalf of B in respect of the conveyance to him, and the other on behalf of A in respect of the conveyance in security by B in his favour. Registration on such warrants not only completes the title of B to the ground, but gives an active title to A, in virtue of which he may enter into possession and enforce payment of his ground-annual by an action of maills and duties. Such an advantage does not attend the use of the older form where A's security consists merely of the reserved real burden; and accordingly it would serve no purpose to record a contract in that form with a warrant on behalf of A.

Contract of ground-annual should be recorded with two warrants.

If it is desired that the ground-annual should be redeemable at a fixed price, the following clause may be inserted immediately after that specifying the grassum:—

BUT DECLARING that the said ground-annual, grassums, interest, and penalties shall be redeemable by the said B or his foresaids at any term of Whitsunday or Martinmas that shall happen within \_\_\_\_\_ years from and after the term of \_\_\_\_\_ next, by their making payment to the said A or his foresaids of the sum of £ \_\_\_\_\_ sterling, and of all arrears and interest thereof, or by their consigning the same in any of the banks in Scotland incorporated by Act of Parliament or Royal Charter, upon three months' premonition in writing, to be given to the said A or his foresaids personally or at his or their dwelling-place if within Scotland, and if furth thereof at the office of Edictal Citations in Edinburgh; on payment or due consignment whereof the said ground-annual, grassums, interest, and

Clause declaring ground-annual redeemable.

penalties shall cease and determine, and the said A and his foressaids shall be bound and obliged to deliver to the said B and his foressaids (at the grantee's expense) all writings necessary for renouncing and discharging the said ground-annual, grassums, interest and penalties.

Writes relating to the transmission and extinction of ground-annuals thus constituted will be found in Title VII. of this work relating to heritable securities. Like other real burdens, ground-annuals may now, under section 30 of the Conveyancing Act of 1874, be transmitted and extinguished, and the title thereto completed, as nearly as may be in the manner of heritable securities requiring to be constituted by infestment in terms of the Consolidation Act, but unlike real burdens for a capital sum these continue heritable in point of succession, section 30 of the Act of 1874 having expressly exempted them from the operation of section 117 of the Consolidation Act of 1868.

#### 5. Commission to Sell Lands, *receive Payment of the Price, and Grant a Disposition.*

Narrative  
clause.

Appoint-  
ment of  
commis-  
sioner.  
Powers.

I, A (*designation*), heritable proprietor of the lands and estate of R, in the parish of S and county of T, being about to leave Scotland and to reside abroad for some time (*modify the narrative as may be required*), CONSIDERING that I desire to sell my said lands and estate of R, and that I have resolved to name a factor and commissioner to act for me in the premises, DO therefore hereby APPOINT B (*designa-  
tion*) to be my factor and commissioner to the effect after written, and GRANT to the said B full power, for me and in my name, to sell my said lands and estate by public roup or private bargain, in whole or in part, for such prices as he may think proper, to receive payment of the prices, and thereupon in my name to grant and deliver to each purchaser a valid disposition of the subjects purchased, with all usual and necessary clauses, and specially a clause binding me in absolute warrandice, and also to execute and deliver all other deeds and writings requisite and necessary for fully conveying the said subjects to the purchaser or purchasers, and for vesting them therein; as also to submit and refer to arbitration any differences or disputes which may arise relative to the sale of said property or the conveyance of the same; and generally with power to my said factor and commissioner to do and cause to be done everything necessary and proper in the premises as fully and freely as I could do myself if personally present: DECLARING ALWAYS that the said B by accept-

ance hereof shall be bound and obliged to hold just count and reckoning with me and my foresaids for his whole intromissions, acts, and deeds done in virtue hereof, he being allowed all necessary disbursements thereanent, and a suitable gratification for his trouble; and also declaring that all persons transacting with the said B in virtue hereof shall be nowise concerned with the application of the sum or sums of money to be paid to the said B as the prices of the foresaid subjects, but shall be absolutely exonerated and secured by the dispositions or other writings to be granted by the said B in virtue hereof: AND I consent to the registration hereof for preservation.—  
IN WITNESS WHEREOF, &c.

Obligation  
to account.

**6. Obligation on behalf of a Minor to Ratify a Disposition on his attaining Majority.**

WE, A, B, and C (*designations*), daughters of the deceased D (*designation*) by his marriage with Y (*designation*), CONSIDERING that E (*designation*), our brother, presently a minor, has of this date, with consent of F (*designation*), as his curator appointed to him (*here state requisite particulars as before shown, p. 69, or as the case may be*), sold and disposed to G (*designation*), his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here describe or validly refer to the subjects*), as the said Disposition in itself more fully bears; and that in the treaty with the said G for the sale of said subjects it was stipulated and agreed that we should grant these presents in manner underwritten; THEREFORE we DO hereby BIND and OBLIGE ourselves, jointly and severally, our heirs, executors, and successors whomsoever, that the said E, on attaining the age of twenty-one years complete, shall at his own expense RATIFY and RENEW the said Disposition in favour of the said G and his successors in the said subjects, under the penalty of £            over and above performance: And in case the said E shall die before attaining the age of twenty-one years complete, we BIND and OBLIGE ourselves, jointly and severally, and our foresaids, to obtain a like ratification and renewal of the foresaid Disposition from the heirs and successors of the said E, and that under the like penalty of £            over and above performance: AND we consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

Narrative  
clause.

Obligation.

An obligation of this nature ought not to be undertaken by any others than the heirs-at-law of the minor, who would be the parties to succeed to the lands by his decease before attaining majority. In any case it is inadvisable, as a claim for damages may arise against the granters notwithstanding their best endeavours to fulfil the obligation.

### 7. Obligation to Purge Incumbrances *constituted by Infeftments.*

Narrative  
clause.

I, A (*designation*), CONSIDERING that I have, by Disposition dated , and recorded (*specify Register of Sasines and date of recording*), sold and disposed to B (*designation*), and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here describe or validly refer to the subjects*); which Disposition contains, *inter alia*, a clause of absolute warrandice: AND SEEING that the said subjects appear by searches of the records to be affected or burdened with the incumbrances particularly after mentioned—viz. (*here insert the particular incumbrances*): AND though I am satisfied that all the foresaid incumbrances either have been purged and extinguished, or are false and forged, yet it is just and reasonable that the said B and his foresaids, and the subjects above described (*or referred to*) should be relieved and disburdened of the same:

Obligation. THEREFORE, without prejudice to the warrandice above mentioned, but in corroboration thereof, I BIND and OBLIGE myself, my heirs and successors, within (*here specify such time as may be agreed on as sufficient*) from the date hereof, either to produce and deliver to the said B or his foresaids sufficient and duly registered discharges and renunciations of all and singular the incumbrances particularly before mentioned, and of the whole grounds and warrants thereof, or, in my option, valid dispositions and conveyances of the said incumbrances in favour of the said B and his foresaids; or otherwise to procure and deliver to the said B and his foresaids a sufficient and formal and valid decree, to be obtained by me in a process before the Lords of Council and Session, either at the instance of him and his foresaids or at my own instance, against all persons interested, finding and declaring the said subjects to be unaffected by, or freed and disburdened of, the said incumbrances; and that under the penalty of £                    sterling over and above performance: AND I

Consent to  
registration.

consent to registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

A formal obligation of this nature will only be required where the incumbrances are numerous or doubtful, or where it seems to the purchaser essential to have the seller's acknowledgment that certain burdens do exist and require to be discharged. When the incumbrances are few or are well known, the clause of absolute warrandice in the disposition constitutes a sufficient obligation on the seller to discharge them.

The more usual way is for the seller or his agent to undertake the obligation by letter handed to the purchaser along with the disposition when the price is paid.

### 8. Docquet appended to Separate Inventory of Writs.

As before mentioned, it sometimes happens that the titles of the subjects sold, if they contain other subjects of greater value, cannot be delivered up. In that case there is inserted in the disposition the necessary obligations to make the titles furthcoming (according to forms given on pp. 94, 95), and a complete inventory of the titles in the seller's possession relating to the subjects sold is delivered to the purchaser along with the disposition; to which inventory when separate from the disposition the following or a similar docquet may be subjoined:—

What is contained on this and the preceding pages is the Docquet to separate inventory of writs.  
Inventory of the writs (or title-deeds) of the lands of X and others, lying in the parish of Y and county of Z, referred to in Disposition of said lands granted by A (*designation*) in favour of B (*designation*), of even date herewith.—IN WITNESS WHEREOF, the preceding Inventory and this Docquet, written upon this and the preceding pages by Y, clerk to Z, Writer to the Signet, Edinburgh, are subscribed, &c. (*complete testing clause in usual form*).

## SECTION V

### ASSIGNATIONS OF UNRECORDED CONVEYANCES

In the preceding pages we have assumed that the title of the disponent has been recorded in the appropriate Register of Sasines. Where however the seller has right to heritable subjects under a conveyance or other writ authorising, but not followed by registration or sasine, a change in the form of transfer becomes necessary. The disponent having no real right in himself, is not in a position to give such to another. Under the old form of conveyance all that was required was an assignment of the unexecuted procuratory or precept in the seller's title. The conveyance, however, usually took the shape of a disposition of the lands containing an assignment of writs either general or special, but omitting the obligation

Assignations of unrecorded conveyances.

Former mode of completing title.

to infest, the procuratory of resignation, and the precept of sasine, which, as the disposer himself had no feudal connection with the lands, he was not in a position to grant. A conveyance in such terms was called a disposition and assignation; and this, as well as the disposition itself, has now been considerably simplified by the Consolidation Act of 1868, by which in substance it has been transformed into an assignation of the disposition or other conveyance by the party last infest.

Mode introduced by  
Consolidation Act of  
1868.

By section 22 of the above-mentioned Consolidation Act, as amended by the Act of 1869, it is provided that it shall be competent to any person having right to an unrecorded deed or conveyance, whether granted in favour of himself or originally granted in favour of another person, to assign the deed or conveyance in or as nearly as may be in the Form No. 1 of Schedule (M) annexed to that Act, setting forth the deed or conveyance, and the title or series of titles, if any, by which he acquired right to the same, and the nature of the right assigned; and the assignation, or, in the event of there being more than one, the successive assignations, may be recorded in the appropriate Register of Sasines along with the deed or conveyance itself, and a warrant of registration thereon, in or as nearly as may be in the Form No. 2 of Schedule (H) annexed to the Act; and it shall be competent to write the assignation or assignations on the deed or conveyance itself, in or as nearly as may be in the Form No. 2 of Schedule (M), setting forth the deed or conveyance, and the title or series of titles, if any, by which such person acquired right to the same, and the nature of the right assigned; in which case the assignation or assignations and the deed or conveyance may be so recorded with warrant of registration, which shall be in or as nearly as may be in the Form No. 1 of Schedule (H); and the deed or conveyance, with the warrant of registration, and the assignation or assignations separate from the deed or conveyance, and those written upon the deed or conveyance, if any, and all similar assignations granted before the commencement of the Act (31st December, 1868) being so recorded, shall operate in favour of the assignee on whose behalf they are presented for registration, as fully and effectually as if the lands contained in the assignation, or, if there be more than one, in the last assignation, had been disposed by the original deed or conveyance in favour of such assignee, and the deed or conveyance, with the warrant of registration, had been recorded of the date of recording such deed or conveyance and assignation or assignations.

### *I.—Assignation of an Unrecorded Conveyance.*

We give here the forms in Schedule (M), Nos. 1 and 2, above referred to, adapted to the form of disposition shown on p. 65.

#### **1. Assignation of Unrecorded Conveyance, executed as a Separate Deed.**

I, B (*designation*), IN CONSIDERATION of the sum of £  
sterling instantly paid to me by C (*designation*), hereby ASSIGN to  
the said C, and his heirs and assignees (*or as the case may be*), the

Disposition granted by A (*designation*), and dated the day of \_\_\_\_\_, by which the said A sold and disposed to me and my heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE the lands of X, as therein described: WITH ENTRY at the term of \_\_\_\_\_: AND I assign the writs, and have delivered the same according to inventory annexed to the said Disposition, and signed by me as relative thereto (*or as the case may be*): AND I assign the rents: AND I bind myself to free and relieve the said C and his foresaids of all feu-duties, casualties, and public burdens: AND I grant warrandice: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c. (*complete testing clause in usual form*).

Though the schedule on which the preceding style is founded seems to contemplate a mere reference by a leading or general name to the subjects as described in the conveyance assigned, we consider it the safer course, particularly where there is no leading or general name, to insert in the assignment the detailed description, or the reference to a recorded deed, from the conveyance itself, whichever mode may be adopted in the conveyance.

Description of lands in assignment.

If the conveyance assigned was originally granted in favour of another person than the grantor of the assignment, there will be inserted immediately after the words "as therein described" a deduction of the grantor's title to the conveyance. This may be in the following terms:—

To WHICH Disposition I acquired right conform to the following writ (*or writs*), viz. (*here specify the writs by which the grantor of the assignment has acquired the right of the person in whose favour the conveyance was originally granted*).

## 2. Assignment of an Unrecorded Conveyance written upon such Conveyance.

If the assignment be written upon the conveyance itself, the deed will run as follows (Schedule (M), No. 2):—

I, B (*designation*), IN CONSIDERATION of, &c. (*as in the preceding style*), hereby ASSIGN to the said C and his heirs and assignees the foregoing Disposition of the lands of X, as therein described, granted in my favour: WITH ENTRY at the term of \_\_\_\_\_ (*add the remaining clauses as in the previous style*).

II.—*Partial Transference by the Grantee in the Original Conveyance.*

It will be observed that the statutory forms are adapted merely to the case where the grantee in the original conveyance transfers his *whole rights* under that conveyance, or, in other words, puts his assignee exactly and to the full extent in his own place. It may be desired, however, to transfer only a portion of the subjects contained in the unrecorded conveyance; and in such case it will be more convenient at once to complete the title of the party proposing to transfer, by infestment on or registration of the conveyance in his favour. The conveyance to be granted by him in that case will be in the form of the ordinary disposition already shown, with the necessary qualification of the clause of assignation of writs. If, however, it is not intended to complete the title of the party transferring, it is recommended that, instead of assigning the conveyance in his favour to the partial extent which may be desired, he should grant a disposition and assignation, which may be in the following terms:—

3. Disposition and Assignation.

I, B (*designation*), proprietor of the subjects hereinafter disposed, IN CONSIDERATION of the sum of £                      sterling instantly paid to me by C (*designation*) as the price thereof, whereof I acknowledge the receipt, DO hereby SELL and DISPONE to the said C and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here describe the subjects conveyed*), together with my whole right, title, and interest, present and future, in the subjects hereby conveyed (*and if there are any real burdens, &c., state or refer to these as before shown, p. 66*): WHICH SUBJECTS are part of ALL AND WHOLE (*here describe the subjects contained in the unrecorded conveyance*), conveyed by disposition thereof granted by A (*designation*) in my favour, dated                      (*or, if the subjects disposed are articulately described in the unrecorded conveyance, say—*which subjects were, *inter alia*, conveyed by Disposition granted by A in my favour, dated                      ): WITH ENTRY at the term of                      : AND I assign the writs, but in respect these contain other subjects still belonging to me, and are not to be delivered, I bind myself and my heirs and successors to make the same furthcoming to the said C and his foresaids, conform to Inventory thereof annexed and subscribed by me as relative hereto, on all necessary occasions, on a receipt and obligation for redelivery thereof within a reasonable time and under a suitable penalty: AND I assign the rents; AND I bind myself to free and relieve the said C

and his foresaids of all feu-duties, casualties, and public burdens: AND I grant warrandice: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

Subsequent transfers by C or his successors should take the same form, and his or their title should be completed by registration of a notarial instrument in the form given below under the third mode of completing the title of assignees to unrecorded conveyances.

### III.—*Completion of the Title of an Assignee to an Unrecorded Conveyance.*

Where the disponent's title is merely personal, i.e., has not been completed by registration, the registration of the conveyance by him, as we have already explained at the commencement of this section, would not give a real right to the person in whose favour the conveyance is granted. In such case the title of the latter can only be completed in one or other of the following modes:—

Modes of completing title of assignee.

(1) By registration of the conveyance of the proprietor last infeft, with warrant of registration thereon on behalf of the assignee, *along with* the transmission or series of transmissions by which the assignee has acquired right to that conveyance. It is to be kept in view, however, that this mode appears to be competent only in the case where the transmission or transmissions are assignments in the form of Schedule (M) of the Act of 1868. Where they include a disposition and assignation, or a general conveyance, the title must be completed in one or other of the second and third modes given below.

(2) By the registration of such conveyance, *along with* a notarial instrument proceeding thereon and on the transmission or series of transmissions thereof; or

(3) By the registration merely of a notarial instrument proceeding on the conveyance by the proprietor last infeft, and transmission or series of transmissions thereof. This last mode is the simplest, and bears a close analogy to the old mode of infeftment by sasine.

### FIRST MODE.

#### (1.) **Separate Assignation or Assignations.**

The warrant of registration to be written on the conveyance will be in favour of the assignee, and in the following form (Schedule (H), No. 2, of Consolidation Act of 1868):—

REGISTER on behalf of C (*full name and designation*) in the

Warrant of  
registration  
of convey-  
ance.

Register of the County of D, along with the Assignment (*or if more than one, Assignations*) docqueted with reference hereto.

(Signed) C,  
(or) F & G,  
W.S., Edinburgh, Agents,  
(or as the case may be).

The assigation or assigations will be presented for registration along with the conveyance, and will each have a docquet and warrant of registration written thereon in the following forms (Schedule (M), No. 1, and Schedule (H), No. 2):—

Docquet on  
assignment.

DOCQUETED with reference to Warrant of Registration on behalf of C (*full name and designation*), written on the *said(a)* Disposition (*or other deed, as the case may be*).

(Signed) C,  
(or) F & G,  
W.S., Edinburgh, Agents,  
(or as the case may be).

Warrant of  
registration  
on assigna-  
tion.

REGISTER on behalf of C (*full name and designation*) in the Register of the County of D.

(Signed) C,  
(or) F & G,  
W.S., Edinburgh, Agents,  
(or as the case may be.)

As will be observed, both warrants are signed by C or his agent or agents in the usual manner, and the docquet is signed *by the person who signs the warrant*. The docquet and warrants which follow on this and the next two pages are signed in similar manner.

## (2.) Assignment or Assignations *Written on the Conveyance.*

No docquet is in this case necessary. One warrant in the form which follows (Schedule (H), No. 1), written on the conveyance, is sufficient, and will be signed in the usual way by the party or his agent or agents.

Warrant of  
registration  
of convey-  
ance.

REGISTER on behalf of C (*full name and designation*) along with Assignment (*or Assignations*) hereon in the Register of the County of D.

The necessary variation will of course be made where it is a burgh register.

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(a) Although this is the statutory form, it may be well, in cases where there is any likelihood of confusion arising, briefly to identify the deed.

SECOND MODE.

**Notarial Instrument in favour of an Assignee to an Unrecorded Conveyance, to be recorded along with such Conveyance.**

*Schedule (N) of Consolidation Act of 1868.*

AT , there was on behalf of C (*designation*) presented to me, Notary-Public subscribing, a Disposition (*or other deed or extract, as the case may be*) granted by A (*designation*), and dated (*insert date, and if an extract, specify the register and date of registration*); by which Disposition the said A sold and disposed to B (*designation*) and his heirs and assignees whomsoever (*or as the case may be*), heritably and irredeemably, ALL AND WHOLE the lands of X, as therein described; and which Disposition (*or other deed*) is to be recorded along with this Instrument: AS ALSO there was presented to me (*here specify the title or series of titles by which C has acquired right to the disposition—e.g., an Assignment granted by the said B in favour of the said C, dated , by which Assignment the said B assigned to the said C and his heirs and assignees, the foresaid Disposition: WITH ENTRY at )*: WHEREUPON this Instrument is taken in the hands of L (*insert name and designation of notary-public*) in the terms of the “Titles to Land Consolidation “(Scotland) Act, 1868.”—IN WITNESS WHEREOF, &c. (*complete testing clause as shown at p. 43*).

The conveyance will be presented for registration along with the notarial instrument, and with the following warrant:—

REGISTER on behalf of C (*full name and designation*) in the Register of the County of D, along with the Notarial Instrument docquetted with reference hereto. Warrant of registration of conveyance.

The notarial instrument will be docquetted, and have also a warrant of registration endorsed on it in the following terms:—

DOCQUETED with reference to Warrant of Registration on behalf of C (*full name and designation*) written on the said (a) Disposition or other deed (*as the case may be*). Docquet of notarial instrument.

REGISTER on behalf of C (*full name and designation*) in the Register of the County of D.

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(a) See note on preceding page.

Both warrants require to be signed by C or his agent or agents, and the docket must be signed by the person signing the warrant.

The lands should be described or referred to in the above notarial instrument in the same manner as in the assignation to C, as to which see our remarks on the assignation, *supra*, p. 115.

### THIRD MODE.

**Notarial Instrument in favour of an Assignee to an Unrecorded Conveyance, to be recorded without the Conveyance.**

*Schedule (J) of Consolidation Act of 1868.*

AT \_\_\_\_\_, there was on behalf of E (*designation*) presented to me, Notary-Public subscribing, a Disposition (*or other deed, or an extract of a deed, as the case may be*) granted by A (*designation*), and dated (*insert date, and if an extract, specify the register and date of registration*); by which Disposition the said A sold and disposed to E (*or B, designation*) and his heirs and assignees whomsoever (*or as the case may be*), heritably and irredeemably, ALL AND WHOLE (*insert description of the lands conveyed, and any real burdens, conditions, provisions, and limitations, or any reference to the same, all as in the disposition or deed, as before shown, p. 65*): WITH ENTRY at the term of \_\_\_\_\_. (*And if the person expeding the instrument be other than the original donee, add*)—AS ALSO there was presented to me (*here specify the title or series of titles by which E acquired right, and the nature of his right, e.g.*)—(*First*) Assignation granted by the said B in favour of C (*designation*), and dated \_\_\_\_\_, whereby the said B assigned to the said C the foresaid Disposition (*or other deed, as the case may be*); (*Second*) Extract Decree of General Service of D (*designation*) as eldest lawful son and nearest lawful heir in general of the said C, obtained before the Sheriff of Chancery on the day of \_\_\_\_\_, and recorded in Chancery and extracted the day of \_\_\_\_\_; and (*Third*) General Disposition and Settlement by the said D, now deceased, dated \_\_\_\_\_, whereby he conveyed to the said E, his son, All and Sundry his whole estate, heritable and moveable, real and personal, then belonging or which might belong to him at the time of his death (*or as the case may be*): WHEREUPON this Instrument is taken in the hands of L (*insert name and designation of notary-public*) in the terms of the "Titles to Land Consolidation

"(Scotland) Act, 1868."—IN WITNESS WHEREOF (*complete testing clause as at p. 43*).

The registration, with an ordinary warrant, of this notarial instrument by itself, completes the title of the party in whose favour it is expedite to the subjects contained in the original unrecorded conveyance by the party last infest.

Should E in the case supposed have acquired right to only a part of the subjects in the unrecorded conveyance by A, the following or a similar variation will be made in the deduction of titles, viz.:—

AS ALSO there was presented to me a Disposition and Assignation granted by the said B in favour of C (*designation*), dated , whereby the said B sold and disposed to the said C, and his heirs and assignees whomsoever, heritably and irredeemably (*or as the case may be*), ALL AND WHOLE (*here describe the subjects, and mention any restriction or qualification, as shown on p. 65*), which subjects are part of ALL AND WHOLE the subjects contained in the foresaid Disposition by the said A in favour of the said B, and hereinbefore particularly described (*and so on, proceeding with the deduction of the remaining titles, if any, as in the preceding example*).

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## SECTION VI

### STYLES OF DEEDS UNDER THE LANDS CLAUSES ACTS

The statutory forms of such conveyances are given as schedules to the Lands Clauses Consolidation (Scotland) Act, 1845; in practice, however, it is usual to amplify these forms, and there are several preliminary deeds in ordinary use of which no statutory forms exist.

In the case of fee-simple proprietors, the compensation money payable by a company for subjects taken or acts done under its compulsory or statutory powers, is in common practice either adjusted between the company and claimant, or made the subject of a reference to two skilled arbiters or to a single skilled arbiter. In the former case no preliminary deeds are requisite.

The consideration-money to an heir of entail in possession is fixed by two "able practical valuers," and is consigned in bank to await the orders of the Court of Session under the Lands Clauses Act.

These remarks are introductory to the following styles, which embrace all the usual forms. The great extension given to the operation of the Lands Clauses Act by recent legislation renders this a very important department of practical conveyancing.

## I.—FREE-SIMPLE PROPRIETORS.

A. *Preliminary Writs.*

1. Minute of Reference.
2. Minute of Acceptance by Arbiters.
3. Minute of Prorogation by Parties.
4. Minute of Prorogation by Arbiters.
5. Decree-Arbitral.

B. *Conveyance Forms.*

1. Ordinary Form.
2. Schedule (A) to Lands Clauses Act.
3. Schedule (B) to Lands Clauses Act.

## II.—HEIRS OF ENTAIL IN POSSESSION.

A. *Preliminary.*

1. Appointment of Valuers.
2. Valuation.

B. *Conveyance Forms.*

1. Conveyance.

## 1. Minute of Reference.

I, A (*designation*), heritable proprietor of, &c., ON THE ONE PART, and WE, THE COMPANY, incorporated by Act of Parliament, ON THE OTHER PART, CONSIDERING that we the said Company, by Notice dated the            day of           , took from the said A            acres and            decimal or one-thousandth parts of an acre imperial measure of land for the purposes of (*name of undertaking*): AND FURTHER CONSIDERING that it has been arranged to refer to arbitration the amount of purchase-money and compensation to be paid by us the said            Company to me the said A in respect of the portions of land taken as aforesaid: THEREFORE I the said A have nominated and appointed, and do hereby nominate and appoint, P (*designation*), as arbiter on my part; and WE the said Company have nominated and appointed, and do hereby nominate and appoint R (*designation*), as arbiter on our part, to fix and determine the amount of purchase-money and compensation to be paid to me the said A for and in respect of the portions of land taken under the said Notice, and extending to           ; and that in terms of, and with the powers conferred upon arbiters

by, "The Lands Clauses Consolidation (Scotland) Act, 1845."—IN WITNESS WHEREOF, &c.

When the parties agree on a single arbiter the necessary alterations will be made.

## 2. Minute of Acceptance by Arbiters.

*(To be endorsed on Minute of Reference.)*

WE, P (*designation*), Arbiter appointed by A (*designation, or as the case may be*), and R (*designation*), Arbiter appointed by The Company, both conform to the foregoing Minute of Reference (*or as the case may be*), do hereby accept of the office of Arbiters conferred on us by the said Minute of Reference; prorogate and extend the time for fixing and determining the matters referred to us till the lapse or termination of the three months allowed by "The Lands Clauses Consolidation (Scotland) Act, 1845," to Arbiters for giving their awards in matters of arbitration; and appoint M, W.S., Edinburgh, to be Clerk to the Reference; and nominate and appoint N (*designation*) to be our Oversman, in terms of the said Lands Clauses Act.—IN WITNESS WHEREOF, &c.

When the arbiters cannot agree on the appointment of an oversman, the following clause should be substituted for the last clause in the preceding form:—

AND in respect we cannot agree in the appointment of an Oversman, we appoint the parties to make application to the Lord Ordinary in terms of the said Lands Clauses Act.

When there is only a single arbiter, there is of course no appointment of an oversman. If the arbiters do not decide within the three months mentioned in the foregoing minute, and which is the limit of period they may give themselves under the Act, the submission falls. It is therefore usual for the parties, a few days before the expiry of the three months, to execute a minute of prorogation in the following form. It should be kept in view that the three months run from the last date of the minute of reference, *not* from the date of the arbiters' minute of acceptance.

## 3. Minute of Prorogation by Parties.

I, A (*designation*), and We, \_\_\_\_\_ Company, CONSIDERING that by Minute of Reference (*or* Nomination of Arbiters), dated \_\_\_\_\_,

we nominated and appointed P and R (*designations*), as Arbiters on our respective parts, to fix and determine the matters set forth in the said Minute of Reference (*or* Nomination): AND SEEING that the said Arbiters have not yet determined the matters referred to them as aforesaid, and that we have agreed to grant these presents: THEREFORE we do hereby, for our respective rights and interests, prorogate and extend the time for the said P and R fixing and determining the matters referred to them till the lapse or termination of three months from and after the last date hereof, renewing hereby the whole powers and clauses contained in the said Minute of Reference (*or* Nomination), which are here held as repeated *brevitatis causa*: AND we BIND and OBLIGE ourselves to implement any Decree-Arbitral to be pronounced by the said Arbiters or their oversman in the premises.—IN WITNESS WHEREOF, &c.

On each occasion of the parties granting such a renewal of the submission, it is usual for the arbiters, so soon as the minute renewing the reference is handed to them, to sign a prorogation in the following terms:—

#### 4. Minute of Prorogation by Arbiters.

WE, P and R (*designations*), Arbiters within designed, do hereby of new accept of the appointments in our favour contained in the foregoing Minute of Reference, and renewed by the immediately preceding Minute of Prorogation, and prorogate and extend the time for fixing and determining the matters referred to us till the lapse or termination of the three months allowed by "The Lands Clauses "Consolidation (Scotland) Act, 1845," to Arbiters for giving their awards in matters of arbitration, and of new nominate and appoint M (*designation*) to be our Oversman, in terms of the said Lands Clauses Act.—IN WITNESS WHEREOF, &c.

When there is only a single arbiter it is generally considered that a prorogation by him is unnecessary.

#### 5. Decree-Arbitral.

Narrative  
clause.

WE, P and R (*designations*), Arbiters as after mentioned, CONSIDERING that by Minute of Reference (*or* Nomination of Arbiters),

dated \_\_\_\_\_, granted by A (*designation*), heritable proprietor of the lands and estate of D, lying within the parish of X and county of F, ON THE ONE PART, and by The \_\_\_\_\_ Company, incorporated by Act of Parliament, ON THE OTHER PART, on the narrative that by the notice therein set forth the said Company took from the property of the said A certain portions of ground extending in whole to (*specify extent*) imperial measure or thereby, for the purposes of (*give short title of Act or undertaking*), and that it was agreed to refer to arbitration the amount of purchase-money and compensation to be paid therefor, the said A nominated and appointed me the said P as Arbiter on his part, and the said \_\_\_\_\_ Company nominated and appointed me the said R as Arbiter on their part, to fix and determine the amount of purchase-money and compensation to be paid to the said A for and in respect of the said portions of land taken under said notice, and that in terms of, and with the powers conferred upon Arbiters by "The Lands Clauses Consolidation (Scotland) Act, 1845:" AND FURTHER CONSIDERING that by Minute of Acceptance, dated \_\_\_\_\_ and \_\_\_\_\_, we, the said P and R, accepted of the office of Arbiters conferred on us by the said nomination, prorogated and extended the time for fixing and determining the matters referred to us till the lapse or termination of three months allowed by the said "Lands Clauses Consolidation (Scotland) Act, 1845," to Arbiters for giving their awards in matters of arbitration, and nominated and appointed \_\_\_\_\_ to be our Oversman in terms of the said Lands Clauses Act: AND FURTHER CONSIDERING that the said reference was prorogated and renewed from time to time, and that we, the said Arbiters, have proceeded in the exercise of our said duty, and having considered the said Minute (*or Nomination*) with the productions made and whole proceedings, and having inspected the lands in presence of the parties or their agents, and heard the proof led (*if such procedure has been followed; and if otherwise, shortly narrate the res gestæ*), issued Notes of our proposed findings; and being now well and ripely advised in the whole matter, and having God and a good conscience before our eyes, we do hereby give forth and pronounce our FINAL SENTENCE and DECREE-ARBITRAL as follows, Findings. viz:—WE hereby find that the sum of \_\_\_\_\_ sterling is the full compensation and purchase-money due and payable by the said \_\_\_\_\_ Company to the said A for and in respect of the taking of the said portions of land, extending in whole to (*specify extent*)

imperial measure or thereby, as the same are delineated and coloured on the plan signed by us as relative hereto, and for and in respect of the intersectional damage, and all other claims and damages arising or occasioned to the remainder of the subjects of which the portions of land so taken are part, by the taking of the said land and by the construction of the works authorised by the said Act: AND we DECERN and ORDAIN the said Company to make payment of the sum of                      sterling to the said A, with interest at the rate of                      pounds per centum per annum until payment (*see Note*): AND we hereby DECLARE that the expenses of the said reference and incident thereto shall be borne and defrayed by the said                      Company in conformity with the provisions of "The Lands Clauses Consolidation (Scotland) Act, 1845;" AND we also find the said                      Company liable in payment to                      clerk to the said reference, for his account of disbursements and for trouble in regard to the said reference, including the expense of this Decree-Arbitral: AND we DECERN and ORDAIN the said Company to make payment thereof to the said                      , together with the expense of recording this Decree-Arbitral: AND we DECERN and ORDAIN the said A to purge and relieve the portions of land taken as aforesaid from all burdens and incumbrances thereon if any be; and on the said                      Company making payment of the sum of money and interest found due, and *simul ac semel* therewith, to execute and deliver to the said                      Company a valid and effectual Conveyance of the lands taken as aforesaid, in terms of the statutes and this award, the discharges of the said incumbrances, if any such be called for and required, said conveyance and all other necessary deeds in connection therewith, including stamps and revising fees, being always at the expense of the said Company; and on the said                      Company making payment of the said sum of money and interest hereby found due, and otherwise implementing this Decree-Arbitral, we hereby DECLARE them to be freed and relieved of all claims and demands at the instance of the said A under and in respect of the said Minute (*or* Nomination of Arbiters) and subject-matter thereof: AND ALSO, on payment and implement as aforesaid, we ORDAIN the said A, if required, to execute and deliver to the said                      Company, at their expense, a formal and valid discharge of this Decree-Arbitral: AND we ORDAIN both parties to implement and fulfil this our Decree-Arbitral in all points

to each other : AND we consent to the registration hereof for preser- Consent to registration.  
vation.—IN WITNESS WHEREOF, &c.

*Note.*—The following or a similar clause should be inserted in decrees-arbitral where the existing burdens on the lands taken have not been estimated in fixing the compensation :—

AND WHEREAS in estimating the value of the land taken as afore- Burdens clause.  
said, the feu-duties, casualties of superiority, and public and parish burdens which affect or are payable for or furth of the same have not been taken into account, we DECERN and ORDAIN that all such feu-duties, casualties, and public and parish burdens presently exigible from the whole of the lands belonging to the said A from which the portions of land acquired by the said Company have been taken, shall continue to be paid by the said A and his heirs and successors in the said lands, who shall relieve the said Company of any portion thereof effeiring to the said portions of land acquired by them, with the exception of poor-rates and prison assessments imposed or assessed, or which may hereafter be imposed or assessed, on the said Company in respect of the said portions of land acquired by them, together with all augmentations of the presently existing public and parish burdens, and which poor-rates and prison assessments, with all augmentations of the presently existing public and parish burdens, shall, so far as applicable to the land taken as aforesaid, be borne and defrayed by the said Company from and after the date of their taking possession of the same.

When the minute of reference contains a submission to the arbiters of accommodation works as well as of the compensation, the decree-arbitral should, immediately after the narrative clause, contain short findings fixing what these works are to be, &c. When the arbiters have differed in opinion and devolved the submission on the oversman, the decree is pronounced by the oversman, and the deed which is granted by him contains a narrative of the devolution.

## 6. Conveyance by Fee-Simple Proprietor.

I, A (*designation*), heritable proprietor of the land and others after Narrative clause.  
mentioned, IN CONSIDERATION of the sum of £                      sterling paid  
to me by the                      Company incorporated by an Act passed in  
the                      and                      years of the reign of                      , chapter                      ,

entitled \_\_\_\_\_, DO hereby, for the purposes of another Act, passed in the \_\_\_\_\_ and \_\_\_\_\_ years of the reign of \_\_\_\_\_, chapter \_\_\_\_\_, entitled (*give title of Act, or as the case may be*),

**Dispositive clause.** SELL, ALIENATE, DISPONE, CONVEY, ASSIGN, and MAKE OVER from me, my heirs and successors, to and in favour of the said Company, their successors and assigns, for ever, according to the true intent and meaning of the said Acts, heritably and irredeemably, ALL AND WHOLE those parts and portions of the lands and others hereinafter mentioned, extending to (*specify extent*) or thereby imperial measure, as the same are delineated and coloured \_\_\_\_\_ on a plan thereof endorsed hereon and subscribed by me as relative hereto; which pieces of ground above disposed form part of ALL AND WHOLE (*describe or validly refer to the lands*); together with all rights and pertinents belonging to the portions of ground above conveyed, and all such right, title, and interest in and to the same as I and my foresaids are or shall become possessed of, or are by the said Acts empowered to convey: WITH ENTRY at the \_\_\_\_\_ (*or where entry has been given previous to the date of this deed, say*—With entry as at the \_\_\_\_\_ day of \_\_\_\_\_, notwithstanding the date hereof): DECLARING as it is hereby PROVIDED and DECLARED, that the foresaid sum of £ \_\_\_\_\_ sterling is in full not only of the purchase-money of the portions of land above conveyed, but also of all claims competent to me and my foresaids for and in respect of severance, detour, inconvenience, and all other injury and damage sustained or to be sustained by and through the taking of the said portions of ground for the purposes of the said second-mentioned Act, and the construction of the works connected therewith: AND I assign the writs, and oblige myself and my foresaids to make them furthcoming to the said Company and their foresaids on all necessary occasions, conform to inventory thereof annexed and subscribed by me as relative hereto: AND I

**Declaration that sum received in full of severance or other damages.**

**Obligation to relieve of burdens, &c.** assign the rents: AND I bind and oblige myself and my foresaids to free and relieve the said Company, and portions of lands and others hereby conveyed, of all incumbrances affecting the same, and of all feu-duties, casualties of superiority, land-tax, minister's stipend, and all other public and parochial burdens (excepting as after mentioned) effeiring to the said lands, not only at and preceding the foresaid date of entry, but in all time thereafter, all of which I now charge upon the remainder of the said lands and others not hereby conveyed; the said Company being however bound to pay the

poor- and school-rates and assessments (*and if this be the case*—likewise all augmentations of the presently existing public and parochial burdens) exigible from the said portions of land and others hereby conveyed from and after the date of their said entry: AND I grant warrandice: AND I consent to registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

When the conveyance proceeds upon a decree-arbitral the narrative clause will show this.

### 7. Alternative Form of Burdens Clause.

AND I bind myself and my foresaids to free and relieve the said Company and their foresaids, and the lands, teinds, and others before disposed, now and in all time coming, of all feu-duties, teind-duties, casualties of superiority, land-tax, minister's stipend, and other public and parish burdens, presently exigible in respect of the said lands, teinds, and others before disposed, with the exception of the whole poor-rates, school-rates, county-rates, and other rates imposed or assessed, or which may be imposed or assessed, on the said Company in respect of the land and others before disposed *qua (specify nature of company)*, and with the exception also of all new and additional burdens and all augmentations of existing burdens, which burdens and others, excepting as aforesaid, are hereby allocated on my remaining lands, and shall continue to be paid by me and my foresaids as before the said Company's entry to the said lands and others before disposed: AND I grant warrandice: AND I consent to registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

Alternative form of burdens clause.

### 8. Schedule (A) of Lands Clauses Act, 1845.

*Conveyance in respect of Price Paid.*

I, \_\_\_\_\_, of \_\_\_\_\_, IN CONSIDERATION of the sum of \_\_\_\_\_ paid to me [*or as the case may be*—into the \_\_\_\_\_ Bank (or to A B of \_\_\_\_\_ and C D of \_\_\_\_\_, two trustees appointed to receive the same)] pursuant to an Act passed, &c., intituled, &c., by the (*here name the company*) incorporated by the said Act, DO hereby SELL, ALIENATE, DISPONE, CONVEY, ASSIGN, and MAKE OVER from

Conveyance Schedule (A).

me, my heirs and successors, to the said Company, their successors, and assigns, for ever, according to the true intent and meaning of the said Act, ALL (*describing the premises to be conveyed*), together with all rights and pertinents thereto belonging, and all such right, title, and interest in and to the same as I and my foresaids are or shall become possessed of, or are by the said Act empowered to convey. [*Here insert the conditions (if any) of the conveyance, and registration clause for preservation and diligence, and a testing clause, according to the form of the law of Scotland.*]

### 9. Schedule (B) of Lands Clauses Act, 1845.

*Conveyance in respect of Feu-Duty or Rent-Charge.*

Conveyance  
—Schedule  
(B).

I, \_\_\_\_\_, of \_\_\_\_\_, IN CONSIDERATION of the feu-duty or rent to be paid to me, my heirs and assigns, as hereinafter mentioned by the (*here name the Company*), established and incorporated by virtue of an Act passed, &c., intituled, &c., DO hereby DISPONE, CONVEY, and MAKE OVER from me, my heirs and successors, to the said Company, their successors and assignees, for ever, according to the true intent and meaning of the said Act, ALL (*describing the premises to be conveyed*), together with all rights and pertinents thereunto belonging, and all my right, title, and interest in and to the same and every part thereof, they the said Company, their successors and assignees, yielding and paying unto me, my heirs and assignees, one clear annual feu-duty or rent of \_\_\_\_\_, by equal half-yearly portions, henceforth on the (*stating the days*). [*Here insert conditions of the conveyance (if any), and insert a registration clause for preservation and diligence, and a testing clause, according to the form of the law of Scotland.*]

### 10. Minute of Appointment of Valuers by Company and Heir of Entail in Possession.

WE, The \_\_\_\_\_ Company, incorporated by Act of Parliament, in pursuance of the provisions of the \_\_\_\_\_ Act (*specify the special Act*), and "The Lands Clauses Consolidation (Scotland) Act, 1845," do hereby nominate and appoint P, and I, B, heir of entail in posses-

sion of the lands and estate of , do also hereby, in terms of the said statutes, nominate and appoint R, as Valutors to fix and determine the purchase-money and compensation to be paid for , being those portions of ALL AND WHOLE (*describe or refer to the lands*) taken by the said Company for the purposes of the works authorised by the first-mentioned Act, and delineated and coloured on the map or plan signed as relative hereto, and for all permanent damage done or which may be done to the said entailed estate by severance or otherwise injuriously affecting such entailed lands and estate by the exercise of the powers conferred by the foresaid Acts.—IN WITNESS WHEREOF, &c.

If the arbiters accept and fix a value, their finding, which may be endorsed on the minute of appointment, is called a—

### 11. Valuation.

WE, P (*designation*), and R (*designation*), Valutors appointed by the foregoing Minute, do hereby fix and determine the purchase-money or compensation to be paid to the said B by the said Company for the lands referred to in the said , and delineated and coloured on the map or plan therein referred to, which is also signed by us as relative hereto, and for all permanent damage done or which may be done to the entailed lands and estate of X by severance or otherwise injuriously affecting said entailed lands and estate by the exercise of the powers conferred by the foresaid Acts, at the sum of pounds sterling.—IN WITNESS WHEREOF, &c.

To comply with the letter of the 9th section of the Lands Clauses Act and the case of *Scottish Midland Railway*, 13 D. 410, the following declaration is sometimes appended to the valuation:—

### 12. Declaration.

WE, P and R, both within designed, do hereby declare that the above is a true and correct Valuation. Dated this day of , 19 .  
(Signed) P.  
( " ) R.

## 13. Conveyance by Heir of Entail in Possession.

Narrative  
clause.

I, B (*designation*), heir of entail infeft and in possession of the entailed lands and estate after described (*or* referred to), IN CONSIDERATION of the sum of £                      sterling paid into the                      Bank by the                      Company, incorporated by an Act

Dispositive  
clause.

(*specify Act*), as the consideration-money or value of the lands and others hereinafter conveyed, and damages as after mentioned, to be applied under the authority of the Court of Session in terms of "The "Lands Clauses Consolidation (Scotland) Act, 1845," do hereby, for the purposes of another Act passed (*specify Act*), SELL, ALIENATE, DISPONE, CONVEY, ASSIGN, and MAKE OVER from me the said B, and the heirs of entail entitled to succeed to me in the said lands, to and in favour of the said                      Company, their successors and assigns, for ever,

Declaration  
that sum  
received  
in full of  
severance  
or other  
damages.

according to the true intent and meaning of the said Acts, ALL AND WHOLE those parts and portions of the lands hereinafter described (*or* referred to), extending to (*specify extent*) acres imperial measure or thereby, as the same are delineated and coloured                      on a plan thereof endorsed hereon and subscribed by me as relative hereto, and which parts and portions of land hereby disposed form part of ALL AND WHOLE the entailed estate of X and others (*here describe or validly refer to the entailed estate as described, &c., in the titles*); together with all rights and pertinents belonging to the portions of land above conveyed, and all such right, title, and interest in and to the same as I and my foresaids are or shall become possessed of, or are by the said Acts empowered to convey: DECLARING, as it is hereby provided and declared, that the foresaid sum of                      pounds is in full, not only of the purchase-money of the portions of land hereby conveyed, and of all my right and interest therein, but also of all claim competent to me the said B and my foresaids, for severance, detour, injury by level-crossing, or inconvenience or other damage of whatever kind sustained and to be sustained by me and my foresaids by and through the taking of the said portions of lands above conveyed for the purposes of the said Act and the construction of the works connected therewith, or which I could claim or demand under the said "Lands Clauses Consolidation (Scotland) Act, 1845," or under the "Railway Clauses Consolidation (Scotland) Act, 1845," but exclusive of the compensation payable by the said Company to the tenant of

the lands hereby disposed: BUT DECLARING that these presents are granted, and shall be accepted of, under the conditions that the said

Declaration  
as to accom-  
modation  
works.

Company shall be bound, as they hereby bind and oblige themselves and their foresaids, to settle the whole claims of the present tenant in the said lands for and in respect of the taking, entering upon, or occupancy of said lands for the purposes of the said Act, and shall construct and maintain the following accesses and works for the accommodation of the remaining portions of the said lands of X not hereby conveyed, viz.—(*First*) A bridge over the railway at the road marked number

in the parish of F on the

Parliamentary plan; and (*Second*) A level-crossing at the east side of the lands, for the accommodation of the severed portion of number

: WITH ENTRY as at

, notwithstanding the date

Term of  
entry.

hereof, &c.

The remaining clauses are similar to those in conveyance by a fee-simple proprietor, p. 127.

This form contains no narrative of the appointment of valuers or their valuation, but some companies are in the practice of giving such a narrative. Several specialties are given in this form.

## TITLE III

### GRANTS FROM THE CROWN AND PRINCE

#### SECTION I

#### SEALS OF THE CROWN AND PRINCE

That the nature of the writs necessary to obtain and complete grants from the Crown or Prince and Steward of Scotland may be more easily understood, we shall give a short account of the Seals used in Scotland in expediting these grants.

The only writs to which sealing was a necessary solemnity in Scotland were those granted by the Sovereign or Prince. But by the Titles to Land Consolidation (Scotland) Act of 1868 (s. 78) the ceremony of sealing is dispensed with in Crown writs passing the Great Seal, unless the receiver of the writ specially requires it to be sealed. The same practice is now followed in the case of writs passing the Quarter Seal. The Seals served as a check to gifts obtained *subreptione vel obreptione*; for where this appeared, the gift might have been stopped at any of the Seals, though the signature had already passed the Sovereign's hand.

The Seals under which these writs pass vary according to the nature of the right conveyed. Those used in Scotland are the Signet, the Privy Seal, the Quarter Seal, and the Seal commonly called "The Union Seal," which was appointed by the Treaty of Union to be kept in Scotland for sealing all writs relative to private rights or grants which were formerly in use to pass the Great Seal of Scotland; for since the Union there is but one Great Seal for the United Kingdom of Great Britain, which is used in sealing writs to elect and summon the Parliament of Great Britain, Treaties with foreign Princes, Public Acts, Instruments, and Orders of State which concern the whole United Kingdom, and in all other matters relating to England wherein the Great Seal of England was used before the Union.

#### SIGNET.

Under the Signet are passed all summonses (with few exceptions) in actions before the Court of Session, and summonses in actions before the Commission of Teinds, hornings, inhibitions, and other legal diligence in the Sovereign's name, issued by authority of the Court of Session, incident diligence for citing witnesses in the course of processes before that Court and the Commission of Teinds. These writs, with a few exceptions, must

be subscribed by a Writer to the Signet, but by the Court of Session Act of 1868 (31 & 32 Vict. c. 100, s. 13) summonses may be signed by any agent entitled to practise before the Court of Session, the last page only requiring to be signed by a Writer to the Signet.

#### PRIVY SEAL.

The writs which formerly passed the Privy Seal were very numerous, such as gifts of pension, &c., presentations to professorships of which the Crown was patron, commissions to various officers, and also precepts for expediting tacks of teinds belonging to the Crown. In terms of the last Commission to the Keeper of the Privy Seal no writs now pass this Seal.

#### QUARTER SEAL.

The Quarter Seal, otherwise called the Testimonial of the Great Seal, is kept by the Director of the Chancery, in whose office all the writs passing under it (as well as under the Union Seal) are written. The writs which pass this Seal are—(1st) Letters of Tutorry in favour of tutors-of-law; (2nd) Letters of Curatory; (3rd) Gifts of *ultimus hæres*, bastardy, and forfeiture, as afterwards explained; (4th) Crown Charters granted to public bodies.

#### GREAT (or UNION) SEAL.

The writs passing this Seal are—(1st) Remissions of murder and other crimes, except high treason, which pass the Great Seal of the United Kingdom. (2ndly) Commissions to superior officers, the warrants of which are framed in London, superscribed by the Sovereign, and pass the Union Seal *per saltum*, without going through the Privy Seal or Signet; and Charters erecting societies into corporate bodies, or increasing the capital of corporate bodies already existing. Commissions to Sheriffs were also formerly in use to pass the Union Seal, but since the Jurisdiction Act these commissions issue sealed from the Home Office, and are recorded in Chancery. (3rdly) Charters in favour of the Crown's vassals.

Gifts of Bastardy, *Ultimus Hæres*, and Forfeiture, pass the Quarter Seal, or Union Seal, according to the nature of the right conveyed. If it be of a land estate holden of a subject-superior, it passes by gift and presentation under the Quarter Seal, but if holden of the Crown, it passes under the Union Seal, like other charters from the Crown.

The Prince and Steward of Scotland has also a Great Seal, under which the charters of his vassals pass when His Royal Highness is of full age. When no Prince exists, or His Royal Highness is under age, they pass under the Union Seal of Scotland.

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## SECTION II

CHARTERS WHICH MAY STILL BE OBTAINED FROM  
CROWN AND PRINCE

Passed on  
signatures.

10 & 11 Vict.  
c. 51, s. 1.

All writs passing under the Seals of the Crown and Prince anciently proceeded upon warrants authorising the affixing of the Seals. The warrant upon which the charter of lands held of the Crown or Prince, and various other grants by the Crown followed was termed a *Signature*, being a writ framed and endorsed by a Clerk to the Signet, which authorised a charter to be passed under the Seals, and contained the whole clauses that were to be inserted in the charter; and when presented to and approved of by the Sovereign or Prince, or the Barons of Exchequer as their commissioners, was the warrant for expediting the charter or other grant. But by the Crown Charters Act of 1847, the practice of presenting and passing Signatures in Exchequer, and thereon framing and issuing Precepts under the Signet, as the warrants of Charters by the Crown, or the Prince and Steward of Scotland, was abolished from and after 1st October 1847; and it was enacted that in place of the signature, a draft of the Charter itself should be prepared by a Writer to the Signet, and, with a short Note in terms of Schedule A annexed to the Act, lodged with the Presenter of Signatures for revisal. These provisions are re-enacted by the Consolidation Act of 1868 (s. 64), and by the Conveyancing Act of 1874 (s. 57), the office of Presenter of Signatures is abolished, and the Sheriff of Chancery now revises the Draft-Charters.

The Charters which most commonly occurred in practice prior to the passing of the Conveyancing Act were Charters of Resignation, Confirmation, Confirmation and Precept for infefting an Heir, Sale, Adjudication in Implement, Adjudication *contra hæreditatem jacentem*, and upon the Act of 1672.

By the Titles Acts of 1858 and 1860, and the Consolidation Act of 1868, short Writs of Confirmation and Resignation endorsed on the deeds confirmed, were introduced in lieu of charters. By section 4 of the Conveyancing Act of 1874, Charters, Precepts, and other writs by Progress are abolished, and the only Crown Charters or Writs, besides those to be immediately mentioned, which will now be met with in practice, are Charters of Novodamus, Writs of Clare Constat, and Precepts from Chancery.

Ultimus  
hæres.

Charters used formerly to be likewise expedite upon gifts of *Ultimus Hæres*, Bastardy, and Forfeiture. By the law of Scotland, the mother, and the relations through the mother, are totally excluded from succession in heritage, and also in moveables, except where a child dies without issue predeceased by his father, in which event the mother is entitled to succeed to the extent of one-third as regards moveables. Thus, brothers or sisters by the mother's side only cannot succeed to each other. Neither can a mother succeed to her child except to the above extent. Where, therefore, there is no agnate, or kinsman related to the deceased by the father's side, the Crown succeeds as *ultimus hæres*.

Where the Sovereign so succeeds to lands held immediately of the Crown, the property of these lands is consolidated *ipso jure* with the superiority: but where the lands are holden of a subject-superior, the

Sovereign becomes merely proprietor. His present Majesty, through the Lords of the Treasury, usually makes a gift of the lands to which he thus succeeds to the person who has the strongest natural claim.

In such case the right is completed by obtaining through Exchequer a warrant from the Crown for making the gift upon certain conditions therein expressed, among which are payment of a certain portion of the estate to the King's Remembrancer, and finding satisfactory caution. This warrant is superscribed by the Sovereign, and when the grant contains lands, the gift passes under the Quarter Seal or Union Seal, as explained in the preceding section. The bond of caution, which is in English form, and for double the amount of the estate, is prepared in the Office of Exchequer, and upon the draft is endorsed the necessary attestation by a Justice of the Peace, of the cautioner's sufficiency. Forms are given below of the warrant and bond of caution.

It most commonly happens that gifts of *ultimus hæres* are applied for by the relations on the mother's side, who could not otherwise succeed. Applications are made to the Treasury through the Office of the King's Remembrancer. Before any deliverance is given upon the application (which in the absence of opposition is usually granted), intimation is made to all concerned in the newspapers; and the gift is not issued till six months after the petition is presented.

As the above observations on the nature and import of gifts of *ultimus hæres* apply equally to the case of Bastardy, little need be added on this point.

We have already remarked that by the law of Scotland the relations on the mother's side are excluded from succession in heritage; hence it is plain that as the law presumes that a bastard has no relations by the father, he can, of course, have no collateral heirs upon his death; and therefore the Crown, in default of the bastard's lawful issue, must in every case succeed in the character of last heir. If the bastard has lawful issue the Crown is excluded.

The crime of High Treason has the effect of forfeiting to the Crown not only all the heritable estate of the person convicted of treason, unless held under a strict entail (in which case the right descends to the next substitute), but also all personal and moveable effects. The convicted person likewise forfeits all honours and dignities; and heirs cannot inherit these upon his death. But by Act 1690, c. 33, it is enacted that the rights of wives, husbands, tacksmen, and creditors shall not be hurt by high treason. However, notwithstanding this Act of Parliament, it is agreed that the rights of the traitor's creditors must be determined by the law of England, by which all real creditors upon a forfeited estate are secured against the consequences of their debtor's attainder, although personal creditors seem to have but little security.

Here the Crown, in the same way as in cases of *Ultimus Hæres* and Bastardy, may renounce the claim to the forfeited estate in favour of a donatary.

Formerly when the Crown granted a Charter by progress, it was frequently thought proper to insert therein a clause of *Novodamus*, which was usually placed immediately after the *Quæquidem* clause. The chief use of this was to secure the person in whose favour the charter was granted, against the effects of any feudal delinquencies incurred by a former vassal, but as Charters by Progress are abolished this can no longer be done. It is, however, still competent for superiors to grant

Forfeiture  
for high  
treason.

Charter of  
novodamus.

proper Charters of *Novodamus*, where the object is to give the vassal, as the name imports, a new grant of the subjects. In order to the granting thereof, it is not necessary that the lands should have been previously resigned into the hands of the superior (50 & 51 Vict. c. 69, s. 3). Such charters, though at the time effectual only as against the superior, may found a good title by prescription against third parties. The common reason for applying for a Charter of *Novodamus* is the loss or destruction of title-deeds, although application may likewise be made on account of an enlargement of the original grant, a change of the feu-duties, or other reasons. In such cases, the application, in the case of Crown Writs, is regulated by the Consolidation Act of 1868, modified by the Conveyancing Act of 1874, the duties formerly discharged by the Presenter of Signatures being now assigned to the Sheriff of Chancery.

Procedure  
in obtaining  
Crown  
charters.

In all cases where a Crown Charter of *Novodamus*, or a new or original grant from the Crown is sought, the person applying for such must, before lodging a note of application, obtain the consent and approbation of the Commissioners of His Majesty's Woods and Forests, or some one of them, and also the consent of the Commissioners of the Board of Trade, under the hand of their secretary for the time, and written evidence of such consent must, along with the Note and Draft-Charter, be laid before the Sheriff of Chancery, in terms of the directions contained in the above Acts. The draft-charter, after being revised and adjusted, is engrossed in Chancery, and thereafter lodged with the King's Remembrancer, to be transmitted for the sign-manual of the Sovereign, or Prince, as may be proper in the circumstances, and the Signatures of the Commissioners of the Treasury, or any two of them. The Consolidation Act of 1868, although (by sections 63 to 78 inclusive and 88) it regulates the mode in which charters containing new or original grants from the Crown are obtained, and gives the forms of Crown Charters of Confirmation and of Resignation (Schedule T), does not give the form of a Charter of *Novodamus*. It provides, however (section 83), that Crown Charters of any other denomination may be in forms as nearly approaching as may be to the examples given.

It is competent to pass a Crown Charter at any period of the year, although the Court of Exchequer should not then be sitting. But in the case of an appeal by Note of Objections to the Lord Ordinary in Exchequer Causes, from the revisal of the Sheriff of Chancery or against the amount of duties charged on the entry, the matter cannot be disposed of until the Court is in term. It may be useful to give a short summary of the procedure in applications under the Acts of 1868 and 1874.

After the requisite consents to the application have been obtained, the draft of the charter is prepared by a Writer to the Signet, and endorsed with his signature. It is then, along with the note of application and written evidence of the requisite consents, lodged in the Office of the Sheriff-Clerk of Chancery.

Along with the Note and Draft-Charter the applicant must lodge the last Crown Writ and Retour or Decree of Service of the lands, and subsequent title-deeds, with evidence of the valued rent when necessary (*i.e.*, where not shown by the valuation books in Exchequer, or by the deeds produced), and an inventory and brief, enumerating and explanatory of the titles. Although the last charter or Chancery precept, being the Crown writ, is generally referred to at the revisal, the Retour in the old form is often called for, to show the new extent and *reddendo*.

When reference is made to the Register of the Great Seal, the Sheriff of Chancery, under the authority of the statute, issues an application (which is likewise signed by the agent) to the Lord Clerk Register for exhibition at the Office of the Sheriff of Chancery of the register book containing the entry of the deed or document wanted. In practice, this application is delivered forty-eight hours before the time of exhibition.

*Procedure  
in obtaining  
Crown  
charters.*

The Sheriff of Chancery then fixes a meeting for revisal of the draft, at which he requires the attendance of the agent, who in all the steps must be a Writer to the Signet. The draft, when revised, is authenticated by the Sheriff of Chancery on each page, and the date of revisal marked at the end, and where there are no objections, or where these are disposed of, it is docketed by the Sheriff and the agent as approved of, and forms the warrant of the charter. It is then officially transmitted by the Sheriff-Clerk to the Director of Chancery.

Power is given by the statute to rectify mistakes occurring in the *tenendas* or *reddendo* of former charters or retours, on reference to the Lord Ordinary in Exchequer. Clerical errors may be corrected by the Sheriff at revisal without any application.

Objections to the Sheriff's revisal, or the amount of duties and composition marked on the draft by him and the King's Remembrancer, as Auditor of Exchequer, may be made in the form of a short written Note of Objections without argument, subscribed by the parties' agent, which is lodged in the Office of the Sheriff-Clerk of Chancery. The Note and whole proceedings are thereupon laid before the Lord Ordinary in Exchequer Causes, and after hearing the objector by himself, his counsel, or agent (who must be a Writer to the Signet), and any report or statement in reply by the Sheriff of Chancery, the Lord Ordinary is directed to cause such alterations and corrections as he may think proper, to be made on the Draft-Writ, and to authenticate these by his signature, and the judgment to be then pronounced by him forms the warrant for preparing in Chancery a corrected Writ.

*Appeal.*

A similar appeal is competent to the Sheriff of Chancery in the case of mistakes or alleged mistakes in former titles, and in every case where the draft of any Crown Writ shall be laid before the Lord Ordinary in Exchequer Causes, intimation thereof, and of the relative report by the Sheriff of Chancery, or Note, as the case may be, shall be made by the agent applying for the Writ to the Solicitor in Scotland for the Commissioners of Woods and Forests, &c., and the Lord Advocate may appear on behalf of the Crown, or said Commissioners, in all future proceedings relating to said Crown Writ, and the Lord Ordinary before finally approving of the Draft-Writ or Charter shall be satisfied that one calendar month's previous notice in writing of such Draft having been laid before him, has been given to the said Solicitor, accompanied by a copy of the said Draft-Writ, and of the report or note.

In lands held of the Prince, Charters are now obtained in the same way as where held of the Crown—the whole provisions of the Acts of 1868 and 1874 applying equally to both. In the case of a charter from the Prince the form is directed in the note appended to Schedule T of the Consolidation Act of 1868, to run in the name of the Prince and Steward of Scotland.

*Charters  
from Prince.*

Original grants by the Crown of heritable subjects (including mines and minerals) now take the form of an ordinary feudal Conveyance or Feu-Disposition by the Commissioners of Woods and Forests or the Board of Trade.

*Original  
Grants by  
Crown.*

Of the Grants from the Crown, which are still in use, we shall first give the form of a Charter of *Novodamus*, which is preceded by a Note, in manner already mentioned :—

### 1. Application for Charter of Novodamus.

Note for A (*designation*).

THE said A humbly prays that a Charter of *Novodamus* (*or otherwise, as the case may be*) may be granted by His Majesty (*or the Prince and Steward of Scotland*), in terms of the draft herewith lodged, and marked as relative hereto.

(*To be signed by a Writer to the Signet, adding to his subscription—“W.S., Agent for the said A.”*)

Written evidence of the consent of the Commissioners of Woods and Forests, and of the Commissioners of the Board of Trade, where a Charter of *Novodamus* is applied for, must be produced and lodged along with the Note and Draft-Charter.

### 2. Charter of Novodamus.

(*Superscribed*)

EDWARD R.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith—We do hereby of new GIVE, GRANT, and DISPONE, and for ever CONFIRM to and in favour of A (*designation*), and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here describe the lands or other heritable subjects*): TO BE HOLDEN the said lands and others of us and Our Royal Successors, in feu-farm, PAYING therefor yearly to us and Our Royal Successors the sum of £                    sterling, at the term of                    , of feu-duty, and a casualty of the like sum of £                    sterling, every year from the term of                    first, over and above the feu-duty of that year.

Given at Our Court at                    this                    day of                    , One thousand nine hundred and                    and in the                    year of Our Reign.

By His Majesty's command.

(*Signed*)                    W. P. A.  
(    "    )                    W. H. S.

IN WITNESS WHEREOF we have ordered the seal now used for the Great Seal of Scotland to be appended hereto of this date (a) [and the same is accordingly at the request of the said A appended], at Edinburgh, the                      day of                      in the year                      .

When the Deed is completed, it is signed by two of the Lords of the Treasury and a Testing Clause in the above terms added, which is subscribed by the Director of Chancery.

### 3. Gift of Ultimus Hæres.

The Deed of Gift here proceeds on a Warrant which is issued from Exchequer, and is superscribed by the Sovereign. The Warrant is written in English, and is in the following terms:—

(Superscribed)

EDWARD R.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith—ORDAINS a Letter of Gift to be made and passed under the Seal in due and competent form to the following effect: WHEREAS it has been represented to us that A (*designation*), died on the                      day of                      unmarried and intestate (*or as the case may be*), and his estate has fallen to us as *Ultimus Hæres*, and whereas applications for a gift of said estate have been addressed to the Commissioners of Our Treasury, by B (*name and designation of applicant*), and others, and the said applications having been duly considered, we are pleased to bestow a gift of the said estate upon the said B (*or otherwise vary the narrative, as may be necessary in the circumstances*): THEREFORE we do hereby GIVE, GRANT, ASSIGN, and DISPONE to and in favour of the said B, ALL AND SUNDRY lands, tenements, and heritages, goods, gear, effects, and sums of money, and all estate, heritable and moveable, real and personal, which belonged to the said A, which have fallen and now pertain to us as *Ultimus Hæres*, according to the law and practice of Scotland, and inherent privileges of the Crown, and without prejudice to the said generality, ALL AND WHOLE (*here describe the heritable subjects*), with the rights, titles, and securities thereof, but with and under the

---

(a) If the vassal does not desire to have the seal appended, leave out the sentence within brackets.

Given at our Court at                      this                      day of  
in the year of Our Lord                      and in the  
year of Our Reign.

*(Signed by two of the Lords of the Treasury.)*

The necessary caution being found, a Bond of Caution in the English form, for double the value of the Estate, is prepared in Exchequer.

**4. Bond to the King by B (*name*) and Surety, *in re* Estate of A (*name*), deceased.**

Know all men by these presents that we, B (*designation of donee*), and C (*designation of cautioner*), are held and firmly bound to Our Sovereign Lord Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, and to His Royal Successors, in the sum of                      pounds; to the which payment well and truly to be made, We bind ourselves conjunctly and severally, and our respective heirs, executors, and administrators, and every of them by these presents. Sealed with Our Seals, dated the                      day of                      in the year of Our Lord, One thousand nine hundred and                      , and in the year of His Majesty's reign: WHEREAS His Majesty has been graciously pleased, by Royal Warrant, dated the                      day of                      , to bestow upon the said B a gift of a portion of the estate of the said A (*designation of deceased*), which fell to His Majesty as *Ultimus Hæres*: AND WHEREAS the said Gift has been granted under the following conditions:—(*First*) That the said B shall pay the debts legally affecting the said estate: (*Secondly*) That he shall pay the expenses incurred, or to be incurred, by His Majesty, or by any of His Majesty's officers or others employed on His Majesty's behalf in relation to the said estate or the gift thereof: (*Thirdly*) That he shall pay one-tenth part (*or as the case may be*) of the residue to the King's and Lord Treasurer's Remembrancer in Scotland: and (*Lastly*) That he shall enter into Bond with sufficient security to fulfil these conditions, to account to His Majesty and all others concerned, for his intromissions with the said estate, whenever he may be required by the proper officer or officers appointed, or to be appointed for that purpose, and to free and relieve His Majesty and His Royal Successors from all claims which may hereafter arise regarding the said estate.

The conditions of this obligation therefore are, that if the said B shall pay the debts legally affecting the said estate, shall pay the expenses incurred, or to be incurred, on His Majesty's behalf, in relation to the said estate or the gift thereof, shall pay one-tenth part (*or as the case may be*) of the residue to the King's and Lord Treasurer's

Remembrancer in Scotland, shall account for his intromissions when required as aforesaid, and shall free and relieve His Majesty and His Royal Successors from all claims which may hereafter arise regarding the said estate, that then this obligation shall be void, but if otherwise, it shall remain in full force and effect.

Signed, sealed, and delivered by the above bounden B in presence of

*(Two witnesses, who add to their subscriptions their designation and address in ordinary English form.)*

Signed, sealed, and delivered by the above bounden C in presence of

*(Two witnesses, who sign as before.)*

The payments to the King's Remembrancer out of such an estate are *ad valorem*, and their present rate—

Where the residue is under	£500, is one-tenth.
Where it amounts to £500, and is under £1,000,	„ eighth.
„ „ £1,000, „ „ £5,000,	„ sixth.
„ „ £5,000, „ „ £10,000,	„ fifth.
„ „ £10,000, and upwards,	„ fourth.

After caution has been duly found, the warrant for the gift is transmitted to Chancery, where a Deed of Gift is prepared, and signed by the Director of Chancery.

Deed of Gift.

This Deed of Gift is in English in ordinary form, and does not require the Royal superscription, but passes the Quarter Seal or Union Seal, and without further authentication is recorded, with Warrant of Registration in usual terms, in the appropriate Register of Sasines, and so completes the donee's title.

Gift in Bastardy, &c.

A Gift in Bastardy now very rarely occurs, being covered by the proceedings already described in *Ultimus Hæres*, and Forfeitures for High Treason are seldom or never seen. It therefore appears unnecessary to give special details as to these.

Grants from the Prince.

When the Prince is under age the charters to his vassals are granted by the Sovereign as his Administrator-in-Law, and pass the same seal as Crown Charters. The variations in the style which this circumstance occasions are as follows. The introductory clause during the minority of the last Prince of Wales was in these terms :—

When Prince in minority.

VICTORIA, by the Grace of God, &c., as Administrator-in-Law for our most dear son, His Royal Highness Albert Edward, Prince and Steward of Scotland; *and the tenendas*, "TO BE HOLDEN, "the said lands and others, of His Royal Highness the Prince and

"Steward of Scotland, and his Royal Successors, Princes and Stewards  
"of Scotland, immediate lawful superiors of the same," &c.

When there is no Prince of Scotland the superiority of the principality lands is annexed temporarily to the Crown, and an Act of Parliament is commonly passed annexing these accordingly, and empowering the sovereign to grant charters to the vassals, which run nearly in the same terms as those to Crown vassals. The variations to be kept in view have been already noticed.

Where the Prince is of full age, the charter runs in the name of His Royal Highness, being presently as follows:—"George, Prince and Steward of Scotland, We do hereby."

On this subject reference is made to the note at the end of Schedule T of the Consolidation Act of 1868.

The title of vassals obtaining Crown Charters and other Crown Writs, so far as these are now competent, is completed in the usual way, by recording the Charter or Writ, or Notarial Instrument thereon, with a Warrant of Registration in common form, in the appropriate Register of Sasines. Completion of vassal's title.

### SECTION III

#### CROWN WRITS OF CLARE CONSTAT, AND PRECEPTS FROM CHANCERY

These writs are saved from the operation of the clause in the Conveyancing Act which abolishes other charters and writs by progress. The procedure to be followed in obtaining them, and disposing of objections and other incidental procedure, is prescribed by sections 63 to 78 inclusive of the Titles to Land Consolidation (Scotland) Act of 1868, and is the same as in the case of other Crown Charters, already explained in Section II. of this Title. Procedure in obtaining.

We need only add that, under section 86 of the Consolidation Act, all Crown Writs of Clare Constat or Precepts from Chancery are null and void, unless recorded, with a Warrant of Registration thereon, on behalf of the heir in whose favour they are granted, in the appropriate Register of Sasines before the first term of Whitsunday or Martinmas following their date, though a new Writ or Precept may be applied for, should the proper registration have been omitted. Must be recorded on or before first term of Whitsunday or Martinmas.

#### 1. Crown Writ of Clare Constat in favour of an Heir of Line.

*Schedule (U), No. 1, Act of 1868.*

EDWARD THE SEVENTH, &c.—WHEREAS by Decree of General Service (or of Special Service, as the case may be) of A (insert name and

*designation of heir*), dated , and recorded in Chancery 19 , and other authentic instruments and documents, it clearly appears that B (*insert name and designation of ancestor*) died last vest and seised as of fee in ALL AND WHOLE (*here describe or validly refer to the lands*); and that in virtue of (*here describe the Crown Charter or Crown Precept and Sasine, or recorded Crown Charter or Crown Precept, or other Crown Writ or Writs forming the last investiture, by dates, and dates of registration in the Register of Sasines and Register of Crown Writs, e.g.*) Crown Writ of Clare Constat, in favour of the said B as heir of , dated , and recorded (*specify Register of Crown Writs*) the day of 19 , and in (*specify Register of Sasines*) the day of 19 ; (*and where there are such add—but always with and under the real burdens, conditions, provisions, and limitations specified in the said Crown Writ of Clare Constat, dated and recorded as aforesaid, or other recorded writ in which the real burdens, &c., are set forth at full length*): AND THAT the said A is eldest son and nearest and lawful heir of the said B (*or specify what other relationship and character of heir the grantee holds*): THEREFORE WE hereby declare the said A to be the heir entitled to succeed to the said B in the said lands and others, to be holden of Us and Our Royal Successors in manner and for payment of the duties specified in the said Crown Writ of Clare Constat (*or if that writ does not contain the tenendas and reddendo, specify any other writ of investiture containing them, or if the reddendo be different, or the vassal desires it, specify the reddendo*).—GIVEN AT EDINBURGH, the day of in the year .

(*Signed by the Director of Chancery, or his  
depute or substitute.*)

## 2. Crown Writ of Clare Constat in favour of an Heir of Provision or Heir of Tailzie and Provision.

*Schedule (U), No. 1, Act of 1868.*

EDWARD THE SEVENTH, &c.—WHEREAS by Decree of General Service (*or of Special Service, as the case may be*) of A (*insert name and designation of heir*), dated , and recorded in Chancery

19 , and other authentic instruments and documents, it clearly appears that B (*insert name and designation of ancestor*) died last vest and seised as of fee in ALL AND WHOLE (*here describe or validly refer to the lands*); and that in virtue of (*here describe the Crown Charter or Crown Precept and Sasine, or recorded Crown Charter or Crown Precept, or other Crown writ or writs forming the last investiture, by dates, and dates of registration in the Register of Sasines and Register of Crown Writs, as in the preceding style, and insert the destination, conditions, &c., at full length, or refer to them, as in Schedule C appended to the Consolidation Act, or thus*), but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (*or clause authorising registration in the Register of Tailzies, as the case may be*) contained in a Deed of Entail granted by M (*name and designation of entailer*), dated day of in favour of the said B and the heirs-male of his body, whom failing, the other heirs therein specified (*here set forth the destination or such part thereof as may be deemed necessary*), and which conditions, provisions, and prohibitory, irritant, and resolute clauses (*or clause authorising registration in the Register of Tailzies as the case may be*) are herein referred to as at length set forth in the said Deed of Entail, which is recorded in the Register of Tailzies on the day of (*or as at length set forth in the above-mentioned recorded Charter, &c., forming the last investiture, or in any other recorded deed or conveyance*); AND THAT the said A is eldest son (*or otherwise, as the case may be, specifying the relationship*) and nearest and lawful heir of tailzie and provision of the said B: THEREFORE We hereby declare the said A to be the nearest and lawful heir of tailzie and provision, entitled to succeed to the said B in the said lands and others, to be holden of Us and Our Royal Successors in manner and for payment of the duties specified in the (*here specify as in the previous style, or if already specified refer to the last Crown Writ of investiture containing the tenendas and reddendo, or insert the reddendo, if different, or if the vassal desires it*).—GIVEN AT EDINBURGH, the day of in the year .

(Signed by the Director of Chancery, or his  
depute or substitute.)

### 3. Precept from Chancery in favour of an Heir of Line.

*Schedule (U), No. 2, Act of 1868.*

EDWARD THE SEVENTH, &c.—WHEREAS by Decree of General Service (or of Special Service, as the case may be) of A (*insert name and designation of the heir*), dated \_\_\_\_\_, and recorded in Chancery 19\_\_\_\_, and other authentic instruments and documents, it clearly appears that B (*insert name and designation of the ancestor*) died last vest and seised as of fee in ALL AND WHOLE (*here describe or validly refer to the lands*); and that in virtue of (*here describe the last writs of investiture as in the preceding styles, e.g.*) Precept from Chancery in favour of the said B, dated \_\_\_\_\_ and recorded in the Register of Crown Writs \_\_\_\_\_, and Instrument of Sasine following thereon in his favour, recorded (*specify Register of Sasines and date of registration, and specify or refer to real burdens, &c.*): AND THAT the said A is the eldest son and nearest and lawful heir of the said B (*or specify what other relationship and character of heir the grantee holds*): AND THAT the said lands and others are holden of Us and Our Royal Successors (*here state the tenure, blench, feu, or other*) for payment of (*here state the reddendo from the last charter or other writ, as the case may be*): THEREFORE We hereby desire any Notary Public to whom these presents may be presented to give to the said A, as heir foresaid, sasine of the lands and others before described (*here add, if the lands are held under any real burdens, &c.*—but always with and under the burdens, conditions, provisions, and limitations above specified or referred to, as the case may be).—GIVEN AT EDINBURGH, the \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_.

*(Signed by the Director of Chancery, or his  
depute or substitute.)*

Completion  
of heir's  
title.

The title of an heir in Crown lands may be completed by registration of the Writ of Clare Constat or Precept from Chancery, with Warrant of Registration thereon on his behalf, in the appropriate Register of Sasines. Having regard to the form and intention of a Precept from Chancery, the natural course would seem to be to expedite and record an instrument of Sasine thereon, in the form of Schedule (B) of the Infektment Act of 1845,

which is expressly exempted from the operation of the Consolidation Act, but there can be no doubt of the competency of recording the Precept itself ; and there seems no reason, therefore, when it is not intended to expedite Sasine, for obtaining and recording a Precept of Clare Constat in preference to a Writ.

The common practice now, where a Special Service has been obtained, is simply to record the Extract Decree with Warrant of Registration in usual form.

# TITLE IV

## CHARTERS OF NOVODAMUS AND OTHER WRITS BETWEEN SUBJECT-SUPERIORS AND THEIR VASSALS

"The Conveyancing (Scotland) Act, 1874," abolished the renewal of investitures. It is not now competent for the superior to grant any charter, precept, or other writ by progress; but Charters of *Novodamus*, Precepts or Writs from Chancery or of *Clare Constat*, and Writs of Acknowledgment, are specially excepted from the operation of the Act. Consequently, in this Title we only deal with Charters of *Novodamus* and Precepts or Writs of *Clare Constat*, &c., introduced by the Act, and certain other minor writs which are still in use.

### SECTION I

#### CHARTER OF NOVODAMUS

A Charter of *Novodamus* is usually granted by the superior to a vassal where the property titles have been lost or destroyed, or where there is a defect in the titles, or where the vassal finds it more convenient or economical to complete his title in this form, the superior always being satisfied that the party applying has right. As the superior in such cases intervenes for the vassal's convenience, the warrandice given is from fact and deed only, and it is also well to state that the Charter is taken *periculo petentis*.

This Charter is also occasionally used where alterations on the original conditions of the feu are intended, though that object may likewise be effected by executing and recording a Minute of Agreement between superior and vassal, in which the variations are articulately set forth.

The following is an example of a—

#### Charter of Novodamus.

I, A, immediate lawful superior of the subjects hereinafter disposed, CONSIDERING that it has been represented to me by B that he is proprietor of the *dominium utile* of the said subjects, that the whole writs and title-deeds thereof have been accidentally lost, and that in consequence I have been requested by the said B

to grant this Charter of *Novodamus*, which I have agreed to do, *periculo petentis (or as the case may be)*. Therefore I, being reasonably satisfied of the said B's right to the said subjects, DO HEREBY of new GIVE, DISPONE, and for ever CONFIRM, to the said B, his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here describe the subjects conveyed at length, and insert all reservations, conditions, &c., and appropriate clauses as in an original feu-charter, except that the warrandice clause should run as follows—* and I grant warrandice from fact and deed only, *salvo jure meo et cujuslibet*).

The narrative of course will vary with the cause of granting, and where the purpose of the Charter is to make an alteration in the feu-duty or other prestations this will be set forth as the cause of granting, and the altered *reddendo* will be clearly stated.

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## SECTION II

### WRITS OF CLARE CONSTAT

Writs of *Clare Constat* were introduced by the Titles to Land Consolidation (Scotland) Act, 1868, and have virtually superseded the Precepts of *Clare Constat* previously used, although these are still competent. The Writ of *Clare Constat* may proceed on any evidence, whether judicial or not, which satisfies the superior, or from which it clearly appears to him that the person claiming the entry is the heir of the last vassal.

#### Writ of Clare Constat.

I, A, immediate lawful superior of the subjects underwritten :  
 WHEREAS by authentic instruments and documents it clearly appears that B died last vest and seised as of fee in ALL AND WHOLE (*here describe the lands as in his infeftment, or validly refer to them in usual manner*), and that in virtue of (*here shortly describe the deed forming the last investiture, specifying the date and recording, and where the subjects are held under any real burdens, &c., add—*But always with and under the real burdens, conditions, provisions, and limitations specified in the said dated and recorded as aforesaid (*or in any other deed in which they are set forth at length*)): AND that C is eldest son, and nearest lawful heir of the said B (*or state whatever other relation or character of heir the grantee possesses*): THEREFORE I hereby

DECLARE the said C to be the heir entitled to succeed to the said B in the said subjects, but always with and under the real burdens, conditions, provisions, and limitations (*if any*) before referred to: To **BE** HOLDEN of me and my successors in manner and for payment of the duties specified in (*here describe the original Charter containing the tenendas and reddendo, or insert the original reddendo ad longum as may be preferred*).—IN WITNESS WHEREOF, &c.

#### VARIATIONS ON WRIT OF CLARE CONSTAT.

##### (1.) When Heir Served.

If the heir has carried through a service, the narrative may run thus:—

WHEREAS by decree of general (*or of special*) service of C, obtained before the Sheriff of \_\_\_\_\_, dated the \_\_\_\_\_ and recorded in Chancery the \_\_\_\_\_, and other authentic instruments and documents, it clearly appears, &c. (*as before*).

##### (2.) Writ of Clare Constat to an Heir of Provision.

A writ of *Clare Constat* granted to an heir of provision differs from the forms already given only in specifying the claimant's *title* as heir of provision, as will appear from the following example:—

I, A, immediately lawful superior of the subjects underwritten: WHEREAS by authentic instruments and documents it clearly appears that B died last vest and seised as of fee in ALL AND WHOLE (*here describe or validly refer to the lands, &c., narrate the last investiture, and refer to any real burdens, &c., as in the former example*), and that C is the only son born of the marriage between D and E, and as such, and by the death of the said B without heirs of his body, is nearest and lawful heir of provision to the said B in the foresaid subjects, in virtue of a Deed of Settlement executed by the deceased F, whereby he disposed the said lands and others to and in favour of himself and his heirs; whom failing to and in favour of the said deceased B and the heirs of his body; whom failing to and in favour of the heirs procreated or to be procreated of the marriage betwixt the said D and E; THEREFORE, I hereby declare the said C to be the heir of provision

entitled to succeed to the said B in the said subjects, &c. (*as in the first example*).

(3.) Writ of Clare Constat to an Heir of Entail.

In the case of an heir of entail, a Service is frequently expedite before the writ of *Clare Constat* is applied for.

I, A, immediate lawful superior of the lands and others underwritten: WHEREAS by Decree of General (or Special) Service of C, obtained before the Sheriff of M, dated the                      day of                      , 19                      , and recorded in Chancery on the                      , and other authentic instruments and documents, it clearly appears that B died last vest and seised as of fee in ALL AND WHOLE (*here describe or validly refer to the subjects and narrate the last investiture, and refer to any real burdens, as in previous examples, and insert the destination, conditions, &c., at full length, or refer to them in the form of Schedule (C) of the Consolidation Act, 1868, or refer to them as follows*)—But always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (or clause authorising registration in the Register of Tailzies, *as the case may be*), contained in Disposition and Deed of Entail of the said lands and others granted by the deceased D, dated the                      day of                      , in favour of the said deceased B and the heirs-male of his body (*here insert the destination, or such part thereof as may be necessary*), and which conditions, provisions, and prohibitory, irritant, and resolute clauses (or clause authorising registration in the Register of Tailzies, *as the case may be*), are herein referred to as at length set forth in the said Disposition and Deed of Entail, which is recorded in the Register of Tailzies on the                      day of                      (*or, as at length set forth in any other Deed or Conveyance recorded in the Register of Sasines, specifying the date and registration*), and that C is the eldest son and nearest lawful heir of tailzie and provision to the said B in the lands and others before specified, under the said Disposition and Deed of Entail: THEREFORE I hereby declare the said C to be the heir of tailzie and provision entitled to succeed to the said B in the said lands and others, but always with and under the real burdens, conditions, provisions, and limitations before referred to (*if any*), and also with and under the conditions, provisions, and prohibitory, irritant, and

resolutive clauses (*or* clause authorising registration in the Register of Tailzies, *as the case may be*) before referred to: TO BE HOLDEN of me and my successors in manner and for payment of the duties specified in (*here specify the charter or other writ containing the tenendas and reddendo, or, if desired, insert the original reddendo ad longum*).—IN WITNESS WHEREOF, &c.

We do not think it necessary here to give an example of the Precept of *Clare Constat*, but refer the Conveyancer to Schedule W. (No. 2) of the Consolidation Act, 1868.

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### SECTION III

#### DISCHARGE OF CASUALTIES, &c.

By the Conveyancing Act of 1874 various provisions were made as to the discharge and the redemption of Casualties, &c. The following are examples of such deeds:—

##### 1. Discharge of Casualties.

I, A, proprietor of the estate of superiority in the lands of X (*or* in ALL AND WHOLE, &c., *here describe or validly refer to the lands to be discharged, as in the vassal's investiture, or other of his recorded titles*), whereof the estate of property belongs to B, IN CONSIDERATION of the sum of £                      sterling now paid to me (*or if other consideration state this*), do hereby for ever DISCHARGE in favour of the said B, and his heirs and successors, all casualties incident to my said estate of superiority exigible in respect of the said estate of property; And I consent to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

Consent of  
creditors.

If only some of the casualties are to be discharged, *e.g.*, the composition payable on the entry of a singular successor, or on each transfer of the property, the Discharge will be limited accordingly. It is to be kept in view that where existing heritable securities affect the superiority "no discharge to be granted to the vassal so redeeming" "shall be effectual without the consent of the creditor" (section 16 of the Conveyancing Act). The Act also enacts (section 18) that casualties

may be redeemed although the superiority is entailed, the entailed proprietor having the same option of receiving a capital price or converting it into an addition to the feu-duty. In the former case provision is made as to the consignment and ultimate application of the sums which may be so received. Where superiority entailed.

The Discharge should be recorded in the appropriate Register of Sasines, with a warrant on behalf of the vassal. Discharge should be recorded.

## 2. Memorandum constituting an Additional Feu-Duty.

IT IS AGREED between A, immediate lawful superior of the lands of (or of ALL AND WHOLE, &c., *here describe or validly refer to the vassal's lands as in his investiture or other of his recorded titles*), on the one part, and B, the proprietor of the *dominium utile* of the said lands, on the other part, that the *dominium utile* of the said lands shall from and after the term of (*state term*) be liable in payment to the superior thereof of an additional feu-duty of £                      over and above the existing feu-duty of £                     , and that yearly, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment at                      for the half-year preceding, and the next term's payment at                      following, and so forth at said terms yearly in all time thereafter, with a fifth part more of each term's payment of liquidate penalty in case of failure in the punctual payment thereof, and interest at the rate of                      per centum per annum of the said additional feu-duty from the respective terms of payment during the not payment of the same: Which additional feu-duty is constituted in respect of a commutation of all casualties (*or of carriages, or otherwise as the case may be*) incident to the said estate of superiority exigible in respect of the *dominium utile* of said lands, and all which casualties (*or carriages, or otherwise*) are hereby for ever discharged.—IN WITNESS WHEREOF, &c.

To Schedule (G) of the Conveyancing Act of 1874, upon which the above form is based, the following Note is appended:—"If the Memorandum be executed by the agents of either or both of the parties, it will be stated in the testing clause that the Memorandum is signed by them in that capacity for and on behalf of their constituent or respective constituents." This direction, however, is apparently not intended to affect the form of the Deed which will bear to be entered into between the principals. Execution of memorandum.

The clause constituting the additional feu-duty should be so framed as to make the terms of payment, whether yearly or half-yearly, coincide with those at which the original feu-duty is payable, and the stipulation

for penalty and interest should also correspond with that in the vassal's investiture.

The Memorandum will be recorded in the appropriate Register of Sasines; and it is the usual practice to write on it a warrant or warrants on behalf of both superior and vassal.

Commuta-  
tion of  
carriages  
and  
services.

Where in lieu of or in addition to a feu-duty, carriages and services are exigible from the vassal, these may be commuted to an annual money payment, either by agreement or judicially, on application of either party to the Sheriff of the County where the lands lie. In the former case a Memorandum also in the form of Schedule (G) constituting the annual sum a feu-duty, will be recorded in the Register of Sasines, and where the commutation is judicial the Extract Decree of the Sheriff will be so recorded.

### 3. Agreement for Conversion of Grain Duties, &c.

IT IS CONTRACTED between A, immediate lawful superior of ALL AND WHOLE (*here describe subjects shortly or by reference*) ON THE ONE PART, and B, proprietor of the *dominium utile* of the said subjects, ON THE OTHER PART; CONSIDERING that under and by virtue of the Feu-Charter granted by C in favour of D, dated , and recorded in the on , the feu-duty payable for said subjects is (*here state the grain or kain duty from the original charter*); FURTHER CONSIDERING that the said A and B have mutually agreed to convert said grain (*or kain*) duty into sterling money, THEREFORE the same is hereby converted into a money feu-duty of £ sterling payable half-yearly at the terms of Whitsunday and Martinmas in each year, beginning the first term's payment at the term of Martinmas 19 for the half-year preceding, and the next term's payment at Whitsunday 19 , and so on half-yearly and termly thereafter in all time coming, together with interest at five per centum per annum on each term's payment from the term when the same becomes payable till paid.—IN WITNESS WHEREOF, &c.

### 4. Memorandum of Allocation of Feu Duty.

Allocation  
of feu-duty.

The Conveyancing Act of 1874 (s. 8) provides that an allocation may be effected by a Memorandum in the form of Schedule (D) written on the Conveyance or other Deed, either before or after its registration in the Register of Sasines. The following is an example:—

THE proportion of the original feu-duty of £ (*specify the feu-duty payable for the whole feu*) allocated upon the subjects within

disposed (*or as the case may be*) is hereby fixed at £ (specify the amount allocated, and if an augmentation has been stipulated for, add with £ of augmentation, making a total of £ ), with a corresponding duplication of said sum of £ [total sum] payable every nineteenth year (*or otherwise as the case may be, and add, if necessary—and on the other terms and conditions applicable thereto, as contained in and provided for by the original Feu-Charter of the whole subjects granted by me in favour of B (insert date and recording), of which the above subjects form part*).

(Signed by the Superior of the lands, or  
his commissioner.)

[Place and date.]

The above Schedule it will be seen does not contemplate any designation of the superior and is not tested, but it is suggested that the party signing should add to his signature such words as "Superior of the said lands," or "Commissioner for A, superior of the said lands."

The following is another form of Minute of Allocation, generally used in the case of tenement property :—

#### 5. Minute of Allocation of Houses in a Tenement.

I, A, immediate lawful superior of ALL AND WHOLE (*here shortly describe subjects, or refer to them as described in the original charter*); [with consent and concurrence of B, heritable creditor in respect of the Bond and Disposition in Security granted by me in his favour, for the sum of £ , dated , and recorded in the Division of the General Register of Sasines applicable to the County of on ]: CONSIDERING that there has now been erected on said subjects in terms of said Feu-Charter, the tenement of houses No.

Street, Edinburgh, consisting of twelve separate houses: FURTHER CONSIDERING that the annual feu-duty payable under said Feu-Charter for said whole tenement and others is £ with a duplicand thereof at the term of Whitsunday 19 , and every twenty-first year thereafter over and above the feu-duty of the year, with interest and penalties as therein provided; and that I, the said A, have been requested to allocate the said feu-duty of £ [and if an augmentation has been stipulated for, add—with an augmentation of , making a total feu-duty of £ ], with relative duplicand upon the various houses in said tenement, which I [with consent foresaid] have agreed to do: THEREFORE I do hereby [with

consent foresaid] DECLARE that from and after the term of

19 [or the date hereof, as the case may be], the proportion of the original feu-duty [and augmentation thereof] with relative duplicands, allocated on the said twelve houses as follows, viz.:—On each of the four houses on the ground flat, £           ; on each of the four houses on the first flat, £           ; and on each of the four houses on the second flat, £           ; all with penalties and interest in each case as stipulated for in the said Feu-Charter with regard to said original feu-duty and duplicand.—IN WITNESS WHEREOF, &c.

**6. Minute of Waiver of a Breach of a Condition of Feu and the Irritancy thereby Caused.**

I, A, immediate lawful superior of ALL AND WHOLE (*here describe the subjects shortly or validly refer to them*), CONSIDERING that B is now proprietor of the *dominium utile* of said subjects, but that his title thereto is defective in that he [or his predecessor] has not (*here shortly narrate the condition or conditions which have been violated*), all as said conditions with irritant and resolute clauses applicable thereto are more particularly set forth in the Feu-Charter granted by me in favour of C, dated           and recorded in the Division of the General Register of Sasines applicable to the County of           , 19   : FURTHER CONSIDERING that in consequence of said failure to observe and implement the said conditions, I am entitled under the said irritant and resolute clauses of the said Charter to enter into possession of the *dominium utile* of said lands, as if the said Charter had never been granted: FURTHER CONSIDERING that the said B has requested me to remove all objection to his title on account of said failure, which I have agreed to do by means of these presents: THEREFORE I DO hereby [in consideration of the sum of £           now paid to me by the said B] WAIVE and DISCHARGE all right competent to me and to my successors as superiors foresaid, to irritate any Disposition, Notarial Instrument or other deed or writ, including both property and security writs, of or relating to the said subjects bearing date prior to these presents: And I likewise WAIVE and DISCHARGE all right competent to me and my foresaids to object thereto on account of the said failure or in respect of anything that has followed thereon; but declaring that I grant these presents always without

prejudice to the said Feu-Charter and the said whole other conditions and irritant and resolute clauses therein contained in so far as not hereby waived.—IN WITNESS WHEREOF, &c.

**7. Minute of Waiver in Respect of Failure to Record Feu-Charter  
timeously.**

I, A, immediate lawful superior of the subjects within disponded, hereby agree, notwithstanding the within clause declaring that these presents shall not be a valid warrant for infeftment nor be registrable after the expiry of six months from the date thereof, to waive my right to object to the want of timeous registration, and agree that these presents shall be a valid warrant for infeftment until after the expiry of one month from the date hereof.—IN WITNESS WHEREOF, &c.

## TITLE V

### SERVICES

#### SECTION I

#### SERVICE OF HEIRS, AND DISPONEES OF HEIRS

##### 1. Mandates in Service of Heirs, or Disponees of Heirs.

A petition for service, whether in general or in special, or for completion of title, must be subscribed by the petitioner, or by a mandatory specially authorised for the purpose. This mandate need not be a separate deed, but may form part of a Faculty and Commission for various purposes, or be embodied in another deed. The following are forms:—

##### (1.) *Mandate in Special Service.*

I, A (*designation*), eldest lawful son of the deceased B (*designation*), hereby AUTHORISE C (*designation*), whom failing D (*designation*), to procure me duly served and decerned nearest lawful heir in special (*or of provision in special, or of tailzie and provision in special, or otherwise as the case may be, stating precisely the character of heir in which service is sought*), to the said B in the lands of X and others in the County of N [*if as heir of tailzie or provision add—under and by virtue of (here specify the Entail or Settlement)*], and for that purpose to subscribe and present as my mandatory the necessary Petition or Petitions to the Sheriff of the County of N (*or to the Sheriff of Chancery*), to obtain extracts from Chancery, and generally to do everything requisite in the premises on my behalf.—IN WITNESS WHEREOF, &c.

##### (2.) *Mandate in General Service.*

I, A (*designation*), eldest lawful son of the deceased B (*designation*), hereby AUTHORISE C (*designation*), whom failing D (*designation*), to

procure me duly served and decerned nearest lawful heir in general (or of provision in general, or of tailzie and provision in general, or otherwise, as the case may be, stating precisely the character of heir in which service is sought), to the said B (if as heir of tailzie or provision add)—under and by virtue of (here specify the entail or settlement), and for that purpose to subscribe and present as my mandatory the necessary Petition or Petitions to the Sheriff of the County of N (or to the Sheriff of Chancery), to obtain extracts from Chancery, and generally to do everything requisite in the premises on my behalf.—IN WITNESS WHEREOF, &c.

(3.) *Mandate in Petition for Completing Title.*

I, A (*designation*), hereby AUTHORISE B (*designation*), whom failing, C (*designation*), on my behalf to subscribe a Petition to the Sheriff of Chancery (or of the County of N) for completing my title, in terms of "The Conveyancing (Scotland) Act, 1874," to the lands of X in the County of N (or in the Burgh of O), in which D (*designation*) was last vest and seised, and to present and carry through such petition, and as my mandatory to take all other proceedings which may be necessary in connection therewith.—IN WITNESS WHEREOF, &c.

## 2. Special Service.

1. Under the Titles to Land Consolidation (Scotland) Act, 1868 (31 & 32 Vict. c. 101, s. 29), a Petition for Special Service, in the form of Schedule Q annexed to that Act, may be used by the heir of a person dying infert. Cases in which used.

2. Under the Conveyancing (Scotland) Act, 1874 (s. 10), a petition in the terms of Schedule E thereto appended may be presented, and a title made up by the heir to or disponee of a proprietor of lands who was neither infert nor served, but vested only with a personal right to such lands by virtue of that Act, or by any person acquiring right from such heir or disponee. In the circumstances referred to, the petition provided by this Act is the only available method of obtaining a title. This petition is said to be "for completing a title," and not for the service of an heir, and may be at the instance of the disponee of an heir, or of the heir or assignee of such disponee, but it falls naturally to be considered under the present head of Services, as it must be presented, published, and carried through in all respects as an ordinary Petition for Special Service under the Consolidation Act of 1868.

Services used in their earlier form to proceed upon briefes from Chancery, which contained a warrant to the judge to whom they were

Petition for  
general  
service.

Where an-  
cestor has  
been dead  
upwards of  
ten years.

Petitions for  
special  
service.

Title of true  
heir not  
invalid,  
though his  
character  
of heir  
erroneously  
stated.

In burgh  
subjects.

directed to try by an inquest the validity of the title of the person who took out the breve. The practice of issuing brieves from Chancery for this purpose was, however, abolished by the Service of Heirs Act, 1847 (10 & 11 Vict. c. 47, ss. 1 and 2), and since 15th November 1847 services whether General or Special have been obtained on petition. If the deceased died domiciled in Scotland, petitions for *General Service* may be presented to the Sheriff of the county within which he or she had at the time of death his or her ordinary or principal domicile, or in the option of the petitioner, to the Sheriff of Chancery, but if the deceased had no domicile at that time within Scotland, only to the Sheriff of Chancery. By the Consolidation Act of 1868 (31 & 32 Vict. c. 101, s. 34), it is provided that "where a General Service only is intended to be carried through by an heir, it shall not be necessary, if the deceased died upwards of ten years prior to the date of presenting the petition for general service as heir to him, to state or prove the county within which the deceased had his ordinary or principal domicile at the time of his death, or that such domicile was furth of Scotland; but in such cases it shall be sufficient (so far as regards the domicile of the deceased) for the heir to state in his petition, and if required, in the Court of Service to make oath, that he is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death: Provided always, that in every such case, and in every case of general service where it is doubtful in what county the deceased had his ordinary or principal domicile, the petition for general service as heir to the deceased, shall be dealt with, and all relative procedure shall be regulated, in or as nearly as may be in the same manner as if it had been proved that the deceased had at the time of his death his ordinary or principal domicile furth of Scotland."

Petitions for *Special Service* may be presented to the Sheriff within whose jurisdiction the lands, or the burgh containing the lands in which the deceased person died last vest and seised, are situated, or, in the option of the petitioner, to the Sheriff of Chancery. When the lands are situated in more counties than one, or in more burghs than one, if such burghs are in different counties, the petition for service must be to the Sheriff of Chancery.

Prior to 1874 it was essential that the service should be strictly in the true legal character, and not in another character, or merely in one which by implication inferred the existence of the true one. It is still very necessary and proper to attend to this, but by the Conveyancing Act of 1874 (s. 11) it is provided that, "notwithstanding any existing law or practice, it shall be no objection to any precept or writ from Chancery, or of *clare constat*, or to any decree of service, whether general or special, or to any writ of acknowledgment, whether obtained before or after the commencement of this Act, or to any other decree, or to any petition, that the character in which an heir is or may have been entitled to succeed, is erroneously stated therein; provided such heir was in truth entitled to succeed as heir to the lands specified in the precept, writ, decree, or petition."

Prior to 1860, the title of an heir to subjects holden burghage in which his predecessor died infert, was expedie before the bailies of the burgh where the subjects were situated, who had a peculiar form of cognosing the heir's title, and giving him sasine by delivery of hasp and staple; but by the Titles to Land (Scotland) Act of 1860 (23 & 24 Vict. c. 143, s. 7), Special Service before the Sheriff of Chancery, or the Sheriff of the County

within which such Burgh is situated, was made competent as in feudal subjects, and since the passing of the Consolidation Act of 1868, it appears incompetent to resort to the old form of cognition. All distinction between feudal and burgage subjects as regards title has now been abolished by the Conveyancing Act of 1874 (38 & 39 Vict. c. 94, s. 25).

Prior to the Service of Heirs Act of 1847 a Special Service was held to include a General Service in the same character, but by that statute Special Services were declared to have this effect only as regards the lands contained in the decree, and it was provided that the heir so served should be liable for the deceased's debts and deeds only to the extent or value of the lands and other heritages embraced in the service. These provisions are, with a verbal alteration, re-enacted in the Consolidation Act of 1868, s. 47, and for the meaning of the word "lands" therein used reference is made to section 3 of the Act.

To what extent general is implied in special service.

By the Service of Heirs Act of 1847 (10 & 11 Vict. c. 47, s. 24) it was provided that "in any petition for special service as heir of line or heir-male, it shall be competent to the petitioner to pray for general service in the same character, and decree may be pronounced in terms of such prayer, as well as for special service;" and this provision is repeated in the Consolidation Act of 1868 (s. 48), with this variation—that a General Service may be sought and obtained in a Petition for Special Service, in the same character as that in which the Special Service is sought, whatever that character may be.

Special and general service.

The expediting of service has always inferred a certain responsibility against the party served, for the debts and obligations of the ancestor, and though the *Service was Special, if it was without Inventory*, or, what would take up the *universitas* of a succession, such as heir in general, whether of line or conquest, universal liability for the ancestor's debts followed as matter of course. The old law, however, provided a remedy against liability beyond the value of the estate, by enabling the heir within a year and day after his ancestor's death, and previous to being served, to give up Inventory of the ancestor's estate. By the Service of Heirs Act of 1847 a simpler mode of relief than the cumbrous one afforded by the Act of 1695 was given, and it was provided by section 23 that a Decree of Special Service under this Act should infer only a limited passive representation of the deceased, and that the person thereby served as heir should be liable for the deceased's debts and deeds only to the extent or value of the lands and other heritages embraced by such Special Service, and no further. By section 25 it was further provided that the liability of an heir serving in general, for the debts and deeds of the deceased, might, by application to that effect in the petition, be limited to the value of the lands or other heritages belonging to the deceased, to be described in a specification (of which an example is given in Schedule D) appended to the petition, and to be referred to in the decree. These provisions are repeated in the Consolidation Act, 1868 (s. 49, Schedule R), but now, under the Conveyancing Act of 1874 (37 & 38 Vict. c. 94, s. 9), a personal right to every estate in land descendible to heirs who shall be alive at or after the commencement of the Act (October 1874) vests in the heir without service, and his liability no longer depends upon the nature of his service. It is by this Act also provided (s. 12) that "an heir shall not be liable for the debts of his ancestor beyond the value of the estate of such ancestor to which he succeeds, and if an heir shall renounce the succession, the creditors of the ancestor shall have the same rights against the estate as upon a renunciation according to the

Liability of heir serving.

1695, c. 24.

10 & 11 Vict. c. 47, s. 23.

“law before the commencement of this Act.” When an heir has before renunciation intromitted with the ancestor's estate, it is provided that he shall be liable for the ancestor's debts to the extent of such intromission, but no further.

**(1.) Petition for Special Service as Heir-at-Law.**

Unto the Honourable the Sheriff of the County of (*specify county where lands are situated, or say of Chancery, as may be desired*), the Petition of A (*name and design the petitioner, and if at instance of a married woman, say with consent and concurrence of the said X, her husband, as her curator and administrator-in-law, and for any right or interest he has in the premises*),

Humbly sheweth,

That the late B (*name and design ancestor to whom service is sought*) died on or about (*state the day, month, and year at full length*), last vest and seised in ALL AND WHOLE (a) (*specify or refer to the subjects as contained in the ancestor's infeftment*), conform to Disposition (*or other Deed or Conveyance*) by C (*designation*), in favour of the said B, dated the                      day of                      , and along (b) with Warrant of Registration thereon on behalf of the said B recorded in the Division of the General Register of Sasines applicable to the County of (*specify register*), on the                      day of                      (*or specify the deed or conveyance on which the ancestor's infeftment proceeded; and, if followed by infeftment, also the Instrument of Sasine, or Notarial Instrument and the mid-couples narrated therein, and register in which the Instrument of Sasine or Notarial Instrument is recorded, and where there are any real burdens, conditions, provisions, or limitations requiring to be inserted or referred to, insert these here, or refer to them in or as nearly as may be in the form of Schedule (D) of the Consolidation Act, thus*)—But always with and under the real burdens, conditions, provisions, and limitations (*or such of these as may apply to*

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(a) In Schedule Q annexed to the Consolidation Act of 1868, a description by reference seems likewise to be contemplated, but the correct mode appears to be to specify the lands at length.

(b) When a recorded conveyance is referred to as the ancestor's infeftment, the warrant of registration should be mentioned, as this is in accordance with the schedule appended to the statute, and appears necessary to complete the title, and if it be an Instrument of Sasine or Notarial Instrument, the whole warrants thereof should be set forth.

It is, however, more usual in practice where separate extracts are desired to present separate petitions.

**(2.) Petition for Special Service as Heir of Provision.**

Unto the Honourable the Sheriff of the County of M (*specify County where lands are situated, or say of Chancery*), the Petition of A (*name and design the petitioner*),

Humbly sheweth,

That the late B (*name and design ancestor to whom service is sought*) died on or about the                      day of                      in the year Nineteen hundred and                      , last vest and seised in ALL AND WHOLE (*describe or refer to the subjects as contained in the ancestor's investiture, conform to (describe the Writ or Writs forming the last investiture, and insert or refer to the real burdens, &c., if any, as in the preceding form).*)

That the petitioner is the only son (*or child*) born of the marriage between T X (*designation*) and O S or X, and as such, and by the death of the said B without leaving heirs of his body, is nearest lawful heir of provision in special of the said B in the lands and others foreshaid, under and by virtue of a Disposition and Deed of Settlement executed by the deceased H (*designation*), dated the                      day of                      , and recorded in the Books of Council and Session the                      day of                      , whereby he disposed the said lands and others to and in favour of the deceased L (*designation*) and the heirs of his body, whom failing, to the said deceased B and the heirs of his body, whom failing, to the heirs born or to be born of the marriage between the said T X and O S or X, whom failing, to the other heirs therein mentioned.

(*If it is wished to embrace a Service in General in the same character as the Special Service, here add*)—That the petitioner is likewise heir of provision in general to the said B, under and by virtue of the said Disposition and Deed of Settlement.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir of provision in special of the said deceased B in the lands and others above described (*or referred to*), but always with and under the real burdens, &c. (*if any*), above written (*or referred to*) (*and where a General Service is wished, add*—And likewise nearest and lawful heir of provision in general of the said B).

According to Justice, &c.

(*Signed by petitioner or his mandatory.*)

**(3.) Petition for Special Service as Heir of Tailzie and Provision.**

Unto the Honourable the Sheriff of the County of M (or of Chancery), the Petition of A (*designation*),

Humbly sheweth,

That the late B (*designation*) died on or about the                      day of                      , in the year Nineteen hundred and                      , last vest and seised in ALL AND WHOLE (*describe or refer to the subjects as contained in the ancestor's infeftment*), conform to Precept from Chancery in favour of the said B, dated, &c. (*specify deed as before*), and along with Warrant of Registration thereon on behalf of the said B recorded in (*specify Register of Sasines and date of recording*), but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (*or clause authorising registration in the Register of Tailzies, as the case may be*), contained in a Disposition and Deed of Entail granted by the deceased G (*designation*), dated the                      day of                      , in favour of the deceased H (*designation*), and the heirs-male of his body, whom failing, the said deceased C and the heirs-male of his body, whom failing, the other substitutes therein specified, and which destination,<sup>(a)</sup> conditions, provisions, and prohibitory, irritant, and resolute clauses (*or clause authorising registration in the Register of Tailzies, as the case may be*), are herein referred to as at length set forth in the said Disposition and Deed of Entail, which is recorded in the Register of Tailzies on the day of                      (*or in any other deed recorded in the Register of Sasines; and in every case where there are real burdens, &c., refer to them as before*).

That the petitioner is the eldest son and heir-male of the body of the said B, and nearest lawful heir of tailzie and provision in special of the said B in the lands and others foresaid, under and by virtue of the said Disposition and Deed of Entail.

(*If General Service is sought, add—That the petitioner is likewise heir of tailzie and provision in general of the said B under and by virtue of the said recorded Disposition and Deed of Entail.*)

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(a) The Schedule to the Act 1868 does not thus refer to the destination, but it would seem proper, if not necessary, to do so. (See section 9 and interpretation clause.)

May it therefore please your Lordship to serve the petitioner nearest and lawful heir of tailzie and provision in special of the said deceased B in the lands and others above described (*or referred to*), but always with and under the conditions, provisions, and prohibitory, irritant and resolute clauses (*or clause authorising registration in the Register of Tailzies, and, where there are such, the real burdens, &c., as the case may be, all above written, or referred to*). (*If General Service also be sought, add—And likewise nearest and lawful heir of tailzie and provision in general of the said B.*)

According to Justice, &c.

(*Signed by petitioner or his mandatory.*)

**(4.) Petition for Special Service of an Heir-Portioner in a pro indiviso Share.**

Unto the Honourable the Sheriff of the County of M (*or of Chancery*), the Petition of A (*designation*),

Humbly sheweth,

That the late B (*designation*) died on or about the                      day of                      Nineteen hundred and                      , last vest and seised in ALL AND WHOLE (*describe or refer to the subjects as before*), conform to (*specify Writs of Investiture as before*); but always with and under the real burdens, &c. (*if any as before*).

That the said B left no issue.

That at his death his three sisters, C, D, and E (*designations*), were the only survivors of the children of F (*designation*), father of the said B, and there were no descendants of predeceasing children of the said F (*or modify the narrative, as may be required*).

That the said E died on or about the                      day of                      , in the year Nineteen hundred and                      , leaving an only child, who is the present petitioner.

That the said D was never married, and died on or about the                      day of                      , in the year Nineteen hundred and                      .

That the said C is still alive, and the petitioner is therefore one

of the two nearest and lawful heirs-portioners in special of the said B in the foresaid subjects.

*(If General Service also be desired, add—That the petitioner is likewise one of the two heirs-portioners in general of the said B.)*

May it therefore please your Lordship to serve the petitioner one of the two nearest and lawful heirs-portioners in special of the deceased B in the subjects above described (*or referred to*), but that to the extent of one-half *pro indiviso* thereof. *(If General Service also be desired, add—*And likewise one of the two nearest and lawful heirs-portioners in general of the said B.)

According to Justice, &c.

*(Signed by petitioner or his mandatory.)*

Where the heir of entail in possession has incurred an irritancy by any act of contravention, the Statute 1685, c. 22, provides "that the next heir of tailzie may immediately upon the contravention, pursue declarations thereof, and serve himself heir to him who died last infeft in the fee and did not contravene, without necessity any ways to represent the contravener;" and thus the contravener is passed over as if he had never made up a title. The following is an example of a Petition of Special Service in such circumstances:—

**(5.) Petition for Special Service by Next Heir of Entail where there has been a Contravention.**

Unto the Honourable the Sheriff of the County of M (*or of Chancery*), the Petition of A (*designation*),

Humbly sheweth,

That the late B (*designation*) died on or about the                      day of                      , last vest and seised in ALL AND WHOLE (*describe or refer to the lands, &c., as before*), conform to a Charter of Resignation under the Union Seal in favour of the said B, dated                      , and sealed the day of                      , and Instrument of Sasine in his favour thereon, recorded in the                      Register of Sasines, at                      , the                      day of                      , Nineteen hundred and                      ; but always with and under the conditions and provisions, and clauses prohibitory, irritant, and resolute (*or as the case may be*), contained in a Deed of Entail granted by G (*designation*) on the                      day

of \_\_\_\_\_, in favour of D (*designation*), and the heirs-male of his body, whom failing, the said B and the heirs-male of his body, whom failing, to E (*designation*) and the heirs-male of his body, whom failing, the other substitutes therein mentioned, and which conditions, provisions, and prohibitory, irritant, and resolute clauses (*or as the case may be*), and destination to heirs, are herein specially referred to as at length set forth in the said Deed of Entail, which is recorded in the Register of Tailzies at Edinburgh the \_\_\_\_\_ day of \_\_\_\_\_, (*or reference may be made to the conditions and destination as contained at length in a registered Deed or Instrument of Sasine forming part of the progress under the entail*).

Title of con-  
travening  
heir.

That on the death of the said B, F (*designation*) made up titles to the said entailed lands and others, as heir-male of tailzie and provision to the said B, his father, upon which he for some time possessed the same.

That the said F having committed an act of contravention of the prohibition of the said entail against selling the lands (*or otherwise, as the case may be*), the petitioner, on the \_\_\_\_\_ day of \_\_\_\_\_, Nineteen hundred and \_\_\_\_\_, obtained Decree of Declarator of Irritancy against him before the Court of Session.

Relation-  
ship.

That the petitioner is the eldest son of the now deceased H (*designation*), who was the immediate younger brother of the said deceased B, and by reason of the irritancy declared against the said F, who was the only son of the said B, the petitioner is thus the nearest lawful heir-male of tailzie and provision in special of the said B, his uncle, in the lands and others foresaid, under and by virtue of the said Deed of Entail.

May it therefore please your Lordship to serve the petitioner nearest lawful heir-male of tailzie and provision in special of the said B in the lands and others above described, but always with and under the conditions, provisions, and prohibitory, irritant and resolute clauses before referred to.

According to Justice, &c.

(*Signed by petitioner or his mandatory.*)

If there are any real burdens, &c., these will of course be specified or referred to in the manner shown in preceding forms.

If the deed of entail is dated on or after 1st October 1858, or in the case of burgage subjects, 1st October 1860, and does not contain pro-

hibitory, irritant, and resolute clauses, but contains a clause of registration in the Register of Tailzies, the reference to the clauses of the entail will be to the conditions, provisions, and clause of registration in the Register of Tailzies.

Entails dated after 1st Oct. 1858.

*N.B.*—The Deed of Entail and decree of declarator should be produced with the petition.

By section 43 of the Conveyancing Act of 1874 it is provided that "when a sole or last surviving trustee has died, or shall have died, "possessed of an estate in land held in trust, and there shall be no contrary provision in the deed of trust, and no contrary order shall be made by the Court of Session, the heir-at-law of such trustee, being of full age, and not subject to any legal incapacity, may complete a title thereto as trustee in his room, in the manner provided by 'The Titles to Land Consolidation (Scotland) Act, 1868,' with respect to the title of any other heir, but such heir-at-law shall not, unless under the orders of the Court, or with the consent and approval of all the beneficiaries (being all above age, and not subject to legal incapacity), administer the trust, but, in the absence of such order, or such consent and approval, shall be bound forthwith to make over the lands to any trustee or judicial factor appointed by the Court for administering the purposes of the trust, or to any trustee or trustees appointed by any person who has power under the trust-deed to make such appointment, or to any person or persons whom the beneficiaries, as aforesaid, may have concurred in appointing to execute the remaining purposes of the trust, or to the beneficiaries themselves, if the whole trust purposes except the conveyance of the lands in terms of the trust have been or shall have been executed; and such heir-at-law shall, unless he acts as a trustee under such orders, or with such consent and approval, be in no way responsible as trustee in regard to the administration of the trust, or of the lands to which he may have made up titles as aforesaid."

Completion of title of heir of last trustee.

This power appears very useful, and calculated, in many instances, to save the expense of an application to the Court, which, before the passing of the Act of 1874, was always required on the death of the last trustee, where the destination in a trust-deed was limited to the trustees there named, without mention of heirs. We give below a form of petition for such case.

**(6.) Petition for Special Service as Heir of sole (or last) surviving Trustee.**

Unto the Honourable the Sheriff of the County of M (*specify county where lands are situated, or say of Chancery*), the the Petition of A (*designation*),

Humbly sheweth,

That the late B (*name and design trustee to whom service is sought*) was sole (*or last surviving*) trustee acting under the after-mentioned Trust-Disposition and Settlement of the now deceased K (*designation*), and died on or about the day of (*state month and*

year at full length), last vest and seised as trustee foresaid in ALL AND WHOLE (*describe or refer to lands as in trustee's infeftment*), conform to (*here describe the warrants of the Notarial Instrument*) and Notarial Instrument in favour of the said B (*or in favour of the said B and of C and D (designations)*), both after mentioned, recorded along with Warrant of Registration thereon, on his (*or their*) behalf in the (*specify Register of Sasines*) on the                    day of                   , but in trust always for the ends, uses, and purposes specified in the said Trust-Disposition and Settlement dated (*if recorded say—and recorded in the Books of Council and Session*                   , *or as the case may be*), whereby the said K gave, granted, and disposed the foresaid lands and others to and in favour of the said B (*or the said B, C, and D, and the acceptors or acceptor, survivors and last survivor of them, (or otherwise in terms of the destination)*).

That the said C resigned the trust conform to Minute of Resignation by him dated                   , and the said D died on or about the                    day of                    (*or as the case may be*).

That it is by the forty-third section of "The Conveyancing" (Scotland) Act, 1874," enacted that "where a sole or last surviving "trustee," &c. (*quote the section*).

That the petitioner, who is of full age, and subject to no legal incapacity, is the eldest son and nearest lawful heir of the said B, and as such is entitled, under and by virtue of the before-recited provision of "The Conveyancing (Scotland) Act, 1874," to be served nearest and lawful heir in special of the said B in the lands and others foresaid, but in trust always for the ends, uses, and purposes specified in the said Trust-Disposition and Settlement, and to the effect and subject to the provisions and qualifications specified in the foresaid Act of Parliament.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in special of the said B in the lands and others above described (*or referred to*), but in trust always as aforesaid, and in terms of and to the effect specified in the forty-third section of "The Conveyancing" (Scotland) Act, 1874."

According to Justice, &c.

(Signed by petitioner or his mandatory.)

**(7.) Petition for Special Service as Successors in Office and Heirs of sole surviving Trustee to a Heritable Bond.(a)**

Unto the Honourable the Sheriff of the County of M (*specify county where lands are situated, or say of Chancery*), the Petition of A (*designation*) and B (*designation*),

Humbly sheweth,

That the late C (*designation*), the sole surviving trustee acting under the after-mentioned Contract of Marriage entered into between M (*designation*) and N (*designation*), died on or about the day of , last vest and seised in ALL AND WHOLE (*describe or refer to lands or subjects as in trustee's infestment*), but that only in real security and for payment to the said C as trustee foresaid and his successors in office, and his or their assignees whomsoever of the sum of £ of principal and interest, and liquidate penalties, all as specified and contained in a Bond and Disposition in Security for £ , granted by D (*designation*) in favour of the said C as trustee foresaid, and his successors in office, and his or their assignees whomsoever, dated the day of , and with Warrant of Registration thereon on behalf of the said C as trustee foresaid, recorded in the Division of the General Register of Sasines applicable to the County of (*specify register*), on the day of , conform to the said Bond and Disposition in Security, dated and recorded as aforesaid; but in trust always for the ends, uses, and purposes specified in the said Contract of Marriage, which is dated the day of , and is registered in the Books of Council and Session (*or specify other register*) the day of , whereby the said M, in consideration of the marriage about to be solemnised between him and the said N, assigned, disposed, conveyed, and made over to C and O, and the acceptors or acceptor, and survivors or survivor of them (*give terms of destination*), ALL AND WHOLE his whole estate, heritable and moveable, real and personal (*or otherwise, give terms of conveyance*), all as therein described, upon and for the ends, uses, trusts, and purposes, and with and under and subject to the powers, conditions, provisions, agree-

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(a) See the case of *Hare, Petr.*, 17 R. 105.

ments, and declarations specified and expressed in the said Contract of Marriage, and specially power of appointment of new trustees, being thereby conferred upon the said M and N and the survivor of them.

That the said O died on or about the                      day of                      ,  
and that the said M died on or about the                      day of                      .

That the said N, by an Indenture or Deed of Appointment, dated the                      day of                      , nominated and appointed the said A and B to be trustees under the said Contract of Marriage, with all the powers thereby conferred on trustees.

That the said A and B are now the sole trustees acting under the said Contract of Marriage, and are the successors in office of the said deceased C as trustees under the said Contract of Marriage, and as such trustees and successors in office are the nearest and lawful heirs of provision in special of the said C as trustee foresaid in the subjects and others foresaid; but that only in real security and for payment of the foresaid sum of £                      of principal, interest, and penalties under and by virtue of the said Bond and Disposition in Security, dated and recorded as aforesaid, and in trust always for the ends, uses, and purposes specified in the said Contract of Marriage.

May it therefore please your Lordship to serve the petitioners nearest and lawful heirs of provision in special of the said C in the subjects and others above described (*or referred to*), but that only in real security, and for payment of the foresaid sums of principal, interest, and penalties, and in trust always as aforesaid.

According to Justice, &c.

*(To be signed by petitioners or their mandatory  
or mandatories.)*

Where the destination in the trust-deed includes the heir of the sole or last surviving trustee, such heir may petition for service in similar terms, but without reference to the Act of 1874, as "heir of provision in "trust." We give below, p. 178, an example of Petition for the General Service of such an heir.

### 3. General Service.

1. A General Service has always been necessary in completing the heir's title to unfeudalised heritable rights, such as conveyances, extract decrees of adjudication, of special service, also to decrees of general service, heritable bonds, and sums of money created real burdens, where executors are excluded and ground annuals.

2. A General Service may be used by the heir of investiture, to a proprietor of lands in which he has died infest. Prior to the Conveyancing Act of 1874, General Service was of no use as a title to lands in which the deceased died infest, but under section 31 of that Act it is now made equivalent to a *mortis causa* general disposition by the deceased proprietor in favour of the heir. Such a service will be of no avail where the heir in whose favour it is expedite died before the commencement of the Act (October 1, 1874). (b) By the next heir, who may serve in general to the person served as above, or "by any of the successive heirs of the "investiture." (c) By the heir of a general disponee.

The heir serving in these cases is supposed to be connected (by position as next heir, or by conveyances or services of intermediate persons) with the proprietor last infest. If an heir intervenes who had no service or conveyance, the title must be made up as pointed out *infra*, section 4.(a)

3. It is competent under the Registration of Leases Act, 1857.

General Services may appear as intermediate links where the title has to be completed according to the form prescribed by the Conveyancing Act of 1874 (s. 10), and they are accordingly mentioned in the Schedule (E) appended to that Act. But when by the intervention of an heir who had only a personal right under section 9 of the Act, the title has to be made up in accordance with section 10 and relative schedule, General Service is not of essential importance, and is of use only in tracing and proving the connection between the petitioner and the proprietor last infest.

#### (1.) Petition for General Service as Heir of Line.

Unto the Honourable the Sheriff of the County of M (or of Chancery), the Petition of A (*designation*),

Humbly sheweth,

That the late B (*name and design ancestor to whom service is sought*) died on or about the                      day of (*state month and year at full length*), and had at the time of his death his ordinary or principal domicile in the County of M (*or furth of Scotland, as the case may be*).

That the petitioner is the eldest son (*state precisely the relationship*)

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(a) As to competency of a petition for service as heir-male in general to a person deceased without reference to any destination, see *Sir A. Moncrieff v. Lord Moncrieff*, 1904, 6 F. 1021.

*or character of heir which the petitioner bears) and nearest lawful heir in general of the said B.*

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in general to the said B.

According to Justice, &c.

*(Signed by petitioner or his mandatory.)*

Where the petition is at the instance of a married woman, the form as given in No. 1 of Special Services, p. 164, may be adapted to suit the circumstances of the case.

If desired, a specification may be annexed to a Petition for General Service, though, in consequence of the operation of section 12 of the Conveyancing Act of 1874, no object seems now to be served by such a limitation, and in practice it is seldom or never used. Where added, the following words will be inserted immediately before the prayer:—

*“But the petitioner desires that his General Service shall be limited to the contents of the Specification annexed,”* and the following words at the close of the prayer:—*“But under limitation as aforesaid to the contents of the Specification annexed.”*

## (2.) Form of Specification.

Specification of the lands and other heritages which belonged to the deceased B (*designation*), referred to in the Petition for General Service presented to the Sheriff of the County of M (*or of Chancery*) by A (*designation*), as heir in general to the said deceased B.

[Here insert a description of the lands and other heritages intended to be included in the service, distinguishing each separate property or heritage, if there are more than one, by a separate number.]

*(Signed by the petitioner or his mandatory.)*

## (3.) Petition for General Service as Heir of Provision where the Ancestor died more than ten years before the date of presenting the Petition, and his Domicile is Unknown.

Unto the Honourable the Sheriff of the County of M (*or of Chancery*), the Petition of A (*designation*),

Humbly sheweth,

That the late B (*name and design ancestor to whom service is sought*)

died on or about the                      day of (*state month and year at full length*), but the petitioner is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death.

That the petitioner is the younger and only brother of the said B, who was never married (*or otherwise, as the case may be*), and is thus nearest lawful heir of provision in general of the said B, under and by virtue of a Disposition and Deed of Settlement executed by C (*designation*), dated                      , whereby he disposed to the said B and the heirs of his body, whom failing, to the petitioner and the other heirs therein mentioned, ALL AND WHOLE the lands of M and others therein described (*or otherwise, as the case may be*).

May it therefore please your Lordship to serve the petitioner nearest and lawful heir of provision in general to the said B under and by virtue of the said Disposition and Deed of Settlement (*or other deed*).

According to Justice, &c.

(*Signed by the petitioner or his mandatory.*)

Of course in the ordinary case where the domicile is known, it will be set forth in the usual manner.

#### (4.) **Petition for General Service as Heir of Tailzie.**

Unto the Honourable the Sheriff of the County of M (*or of Chancery*), the Petition of A (*designation*),

Humbly sheweth,

That the late B (*name and design ancestor to whom service is sought*) died on or about the                      day of (*state month and year at full length*), and had at the time of his death his ordinary or principal domicile in the County of M (*or furth of Scotland, as the case may be*).

That the petitioner is the eldest son and nearest and lawful heir-male of tailzie and provision in general of the said B, under and by virtue of a Disposition and Deed of Entail, granted by C (*designation*), dated                      , and recorded in the Register of Tailzies on the

(*specify date of registration*), whereby the said C conveyed the lands of X and others therein particularly described (*or referred to*), to and in favour of F (*designation*) and the heirs-male of his body, whom failing, to the said B and the heirs-male of his body (*here set forth the destination or such part thereof as may be deemed necessary, or say—and the other heirs therein mentioned*); but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (*or, clause authorising registration in the Register of Tailzies, as the case may be*) contained in the said recorded Deed of Entail, and here referred to, as at length set forth therein.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir-male of tailzie and provision in general to the said B under and in virtue of the said Disposition and Deed of Entail.

According to Justice, &c.

(*Signed by the petitioner or his mandatory.*)

**(5.) Petition for General Service as Heir of Provision in Trust.**

Unto the Honourable the Sheriff of the County of M (*or of Chancery*), the Petition of A (*designation*), surviving and accepting Trustee of the late B (*name and designation of trustee*),

Humbly sheweth,

That the said B died on or about the                      day of                      , leaving a Trust-Disposition and Settlement dated                      (*and if recorded, specify register and date of registration in the usual manner*), whereby he disposed, conveyed, and made over to and in favour of the now deceased C (*designation*), whom failing, to the petitioner, the said A, as trustees to act in succession, for the ends, uses, and purposes therein specified, his whole estate and effects therein described.

That the said C accepted of the trust, and acted as trustee foresaid, and that he died on or about the                      day of (*state month and year at full length*); and had, at the time of his death,

his ordinary or principal domicile in the County of M (*or furth of Scotland, as the case may be*).

That the petitioner is the successor in office, and now the sole surviving trustee of the said B, and as such is the nearest and lawful heir of provision in general of the said C, as trustee foresaid, under and by virtue of the said Trust-Disposition and Settlement.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir of provision in general to the said C, as trustee foresaid, under and by virtue of the said Trust-Disposition and Settlement, but in trust always for the ends, uses, and purposes therein expressed.

According to Justice, &c.

(*Signed by the petitioner or his mandatory.*)

A petition in similar form, *mutatis mutandis*, may also proceed at the instance of the heir-at-law of the sole or last surviving trustee, if the trust-deed includes a destination to such heir. If it contains no such destination, the heir-at-law (being above age, and not subject to any legal incapacity) may nevertheless serve as heir in general (not of provision) under section 43 of the Conveyancing Act, 1874, already quoted (*vide* Form 6 of Special Services, pp. 171, 172), provided that such service is consistent with the directions of the trust-deed, and that there shall be no contrary order by the Court of Session.

#### 4. Petitions for Completing Title *under the Conveyancing Act of 1874 (s. 10).*

This is a kind of Special Service which differs in many respects from the ordinary Special Service, and on that account is dealt with separately.

The petition is available (1) to one not the *immediate* heir; and (2) to the disponent of an heir whether immediate or more remote, or to the heir or assignee of such disponent. In all cases where this form is used, however, there must have intervened between the person last infeft and the petitioner, an heir who had no completed title, but merely a *personal right* by virtue of the Act—*i.e.*, a personal right acquired through the deceased heir having been alive at or after 1st October, 1874, when the Act came into operation.

The statutory form (Schedule E) illustrates the various circumstances in which the petition now under consideration may be resorted to, but it may be useful to have simpler forms, one or other of which will be found adapted to the cases which usually occur in practice. A few such forms will now be given.

(1.) *Petition by an Heir to Complete Title.*

Unto the Honourable the Sheriff of the County of M (*or of Chancery*), the Petition of A (*designation*),

Humbly sheweth,

That the late B (*designation*) died last vest and seised in ALL AND WHOLE (*describe or refer to the subjects as these are described or referred to in the recorded deed or instrument in favour of the deceased*), conform to Disposition (*or other recorded deed, as the case may be*) granted by X (*designation*) in favour of the said B, dated (*specify date*), and recorded (*specify Register of Sasines and date of recording, and where there are any real burdens, conditions, or qualifications, here specify or refer to them thus—but always with and under the real burdens, conditions, and qualifications specified in the said Disposition recorded as aforesaid; or otherwise, as the case may be*).

That C (*designation*), eldest son of the said B (*or otherwise, as the case may be*), and his nearest and lawful heir, succeeded to him in the said subjects, but died on the            day of            , unserved and uninfert, and having only a personal right thereto.

That the said C was succeeded by the petitioner the said A, his son and only child (*or otherwise, as the case may be*).

That the petitioner is nearest and lawful heir of the said C in the said subjects.

May it therefore please your Lordship to find the facts above set forth proved, and that the petitioner is entitled to procure himself infert in the foresaid subjects in terms of "The Conveyancing (Scotland) Act, 1874" (*and where there are real burdens, &c., add—but always with and under the real burdens, conditions, and qualifications, before specified or referred to*), and to decern.

According to Justice, &c.

(*Signed by the petitioner or his mandatory.*)

*Note.*—Although description by reference is permitted, it appears advisable, unless where other causes render this inexpedient, to describe the subjects at length.

In the case here exemplified, it would be equally competent for the heir to complete a title to the lands by Special Service to the common ancestor B, and although we think the Conveyancing Act of 1874 admits of the alternative mode above shown, Service as heir in Special in the ordinary way is probably to be preferred.

**(2.) Another Form of Same.**

Unto the Honourable the Sheriff of the County of M (*or of Chancery*), &c., the Petition of A (*designation*),

Humbly sheweth,

That the late B (*designation*) died last vest and seised in ALL AND Petition by an heir. WHOLE, &c. (*here describe or refer to the subjects, and any real burdens, &c., as in the preceding form*).

That the said B, by Disposition dated (*specify date*), conveyed the said subjects to C (*designation*), who died without having been infeft therein.

That D (*designation*), eldest son of the said C, was his heir in the said subjects, but had only a personal right thereto (*or That D, eldest son of the said C, and his nearest lawful heir in the said subjects, died on the            day of            , unserved and uninfeft, and having only a personal right thereto*).

That the said D, by Disposition dated (*specify date*), conveyed the said lands to E (*designation*).

That the said E died on the            day of            , leaving no issue, and the petitioner is his only brother-german, and nearest and lawful heir in the said lands.

May it therefore please, &c. (*complete prayer as in the preceding form*).

**(3.) Petition to Complete Title, by Disponee of Heir.**

Unto the Honourable, &c., the Petition of A (*designation*),

By disponee of heir.

Humbly sheweth,

That the late B (*designation*) died last vest and seised in ALL AND WHOLE (*here describe or refer to the lands, specify title and date of recording, and specify or refer to real burdens, &c., if any, all as shown in Form No. (1), p. 180*).

That C (*designation*), eldest son of the said B (*or otherwise, as the case may be*), was his nearest and lawful heir in the said lands, but had not been served and had only a personal right thereto (*or That C, eldest son of the said B, and his nearest and lawful heir in the said lands, died on the            day of            , unserved, and having only a personal right thereto*).

That the said C, by Disposition dated (*specify date*), conveyed the said lands to the petitioner.

May it therefore, &c. (*complete prayer as in Form No. (1), p. 180*).

#### (4.) Another Form of Same.

Unto the Honourable, &c., the Petition of A (*designation*),  
Humbly sheweth,

That the late B (*designation*) died last vest and seised in ALL AND WHOLE (*here describe or refer to the lands, specify title and date of recording, and also specify or refer to real burdens, &c., if any, all as in Form No. (1), p. 180*).

That the said B, by Disposition dated (*specify date*), conveyed the said lands to C (*designation*), who died on the            day of            , never having been infeft therein.

That the said C had issue, viz., one son D (*designation*), and two daughters, E and F (*designations*).

That the said D was never married, and predeceased his father. That the said E and F are heirs-portioners of the said C in the said lands, but have only a personal right thereto (*or were heirs-portioners of the said C in the said lands, but died on the            day of            , and            day of            , respectively, unserved and having only a personal right to the said lands*).

That the said E and F, by Disposition dated (*specify date*), conveyed the said lands to the petitioner.

May it therefore please, &c. (*complete prayer as in Form No. (1), p. 180*).

According to Justice, &c.

(*Signed by petitioner or his mandatory.*)

(5.) **Petition to Complete Title** *where an intermediate Heir has been served in General, or in Special.*

Unto the Honourable, &c., the Petition of A (*designation*),

Humbly sheweth,

That the late B (*designation*) died last vest and seised in ALL AND WHOLE (*here describe or refer to the subjects*), conform to (*specify title and date of recording, and specify or refer to real burdens, &c., if any, as before shown in Form No. (1), p. 180*).

That upon the death of the said B he was succeeded by C (*designation*), his eldest son (*or as the case may be*), as his heir in the said lands. That the said C expedie a Special Service as heir of the said B, conform to (*specify decree*), but died without being infeft thereon (*or That the said C expedie a General Service as heir of the said B, conform to (specify decree), but made up no further title*).

That the said C was succeeded by his eldest son D (*designation*), who was his nearest and lawful heir in the said lands, but that the said D died on the                      day of                      , unserved, and having only a personal right to the said lands.

That the said D was succeeded by the petitioner his eldest son, and heir in said lands.

May it therefore please, &c. (*complete prayer as in Form No. (1), p. 180*).

According to Justice, &c.

(*Signed by petitioner or his mandatory.*)

In this case also the title might competently be completed by the service of A as heir in general to C, and Notarial Instrument.

If any of the transmissions have been judicial, as by Adjudication, Act and Warrant of Court, or otherwise, or if, by any of the transmissions, part of the lands only is transferred, the necessary alterations will of course be made on the form of the petition.

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## SECTION II

## PROCEDURE IN SERVICES

After being lodged, Petitions for Service are published by the Sheriff-Clerk of the Court where they are presented, and no evidence can be taken or decree pronounced until the *induciae* of publication have expired.

The requisite publication is prescribed by the Consolidation Act of 1868 (ss. 30 and 33), and its rules are, shortly, as follows:—(1) Petitions for GENERAL SERVICE presented to the Sheriff of Chancery shall be published edictally, at Edinburgh, as in Edictal Citations; and also in the county of domicile, if the deceased died domiciled in Scotland; (2) Such petitions presented in the Sheriff-Court of a county shall be published in the county and also edictally at Edinburgh; (3) Petitions for SPECIAL SERVICE, whether presented to the Sheriff of any county, or to the Sheriff of Chancery, shall be published edictally at Edinburgh, and also in the county or counties where the lands are situated.

The *Publication*, and *Official Notices*, are under the charge of the Sheriff-Clerk of Chancery and the Sheriff-Clerks of counties, and the forms fixed by Act of Sederunt of 14th July 1847 made permanent by Act of Sederunt of 17th November 1849.

*Induciae.*

It is provided by the Consolidation Act above mentioned that no evidence shall be led, nor shall decree be pronounced in a Petition for Service, until after the expiry of the *induciae*, which are as follows:—1st, Where the deceased died in Scotland, *fifteen* days from the date of the latest publication; 2nd, where publication is in Orkney or Shetland, or the petition is presented to the Sheriff of Orkney or Shetland, *twenty* days must elapse after such latest publication; 3rd, in all petitions to the Sheriff of Chancery, where the deceased died abroad, *thirty* days must elapse after the latest publication.

No express provision is made for the case of a Petition for *Special Service* to the Sheriff of a county, where the deceased died abroad, although such petition is competent under section 28 of above Act. It is probable that the long *induciae* of thirty days after the edictal publication in Edinburgh would be held to apply; but the safe course in any case of doubt is to present the petition to the Sheriff of Chancery.

*Forms of the Abstracts of Petitions for Service* framed by the Sheriff-Clerks for the purpose of publication are embodied in the above-mentioned Acts of Sederunt passed in virtue of the Service of Heirs Act of 1847.

In *General Services* the material parts of the abstract are—1st, *The Court of Service*; 2nd, *the name and designation of the petitioner*; 3rd, *his relationship and character of Heir*; 4th, *the name, designation, and domicile of the deceased*.

In *Special Services* the above particulars, with the exception of domicile, are required, and in addition the *general designation* or *leading name* of the subjects, and the county or counties within which they are situated.

In the abstract of a Petition for *Special Service* it is essential that the leading name or general designation shall convey sufficient information to all interested in the property; and as the edictal intimation, which is made in a printed form, requires to be brief, all detail of parts or pendicles, or other mere accessories of the subjects, should be avoided.

In the case of petitions authorised by the tenth section of the Conveyancing Act of 1874, the abstract should contain the further particulars required to be shown by these.

By the Consolidation Act of 1868 it is enacted that after publication of any petition for service has been made, and the *induciae* above mentioned have expired, the Sheriff to whom the petition shall have been presented, by himself, or by the Provost, or any of the Bailies of any city or Royal or Parliamentary Burgh, or by any Justice of the Peace for any part of the United Kingdom, wherever such Justice of the Peace may happen to be for the time, whether within the United Kingdom or abroad, or by any Notary Public, all acting as Commissioners of such Sheriff under the authority of the statute, without special appointment, or by any Commissioner whom the Sheriff may appoint, shall receive all competent evidence, documentary and parole, and any parole evidence so received shall be taken down in writing, according to the practice in the Sheriff Courts of Scotland, existing prior to the 1st day of November 1853, and a full and complete inventory of the documents produced shall be made out, and shall be certified by the Sheriff or his Commissioner aforesaid.

PROOF in the Petition of A (*designation*) for Service as Heir ~~Proof~~  
in Special (*or General, as the case may be*) of the deceased  
B (*designation*).

Compared J (designation), who being solemnly sworn and Deposition. interrogated, Depones (*here prove the facts stated in the Petition, in some such form as follows*), I was acquainted with the said B. He died at \_\_\_\_\_, on or about the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ (*add, in the case of a General Service*—and had at the time of his death his ordinary or principal domicile in the County of \_\_\_\_\_). The said A is the eldest son of the said B. All which is truth, as the deponent shall answer to God.

(Signed on each page by the deponent, and also by the Commissioner, who appends his qualification on the last page of each deposition.)

It will be kept in mind that each link in the chain must be accurately set forth.

The deposition of the second witness may follow that of the first, shortly, thus:—

Also appeared Y (*designation*), who being solemnly sworn and interrogated, Depones and concurs *in omnibus* with the preceding witness. All which is truth, as the deponent shall answer to God.

(*Signed by deponent and Commissioner as before.*)

This deponent should also sign each page of the leading deposition in which he concurs.

The petitioner must instruct the several heads of his petition by evidence appropriate to the particular averment. As to some of these we may shortly observe:—

Death.

(1) Date of the deceased's death. This is generally so well known as to admit of easy proof; but if he died abroad, or if the fact or date of his death be disputed, it must be proved by witnesses or authentic documents, in a manner satisfactory to the Sheriff. If the witness's knowledge of the death, and date of death, is derived entirely from written documents, such as certificates of death, burial, &c., or holograph letters from members of the family intimating the death, his deposition will run thus:—

THE said B died at (*state where he died*) on or about the day of                      Nineteen hundred and                      , as appears from the following certificates produced by the deponent, viz. (*here describe these*).

In general the depositions should state the witness's means of knowledge where he is only giving secondary evidence on the subject. Some latitude as to the period of the death is necessarily implied in the words "on or about," and when remote it is no good objection that the evidence does not tally exactly with the date stated in the petition. The date is necessary in the case of land held by the Crown for fixing the casualties payable in proper blench-holdings, and blench in room of ward-holdings.

Domicile.

(2) *Domicile*.—This has commonly to be proved in General Services. But the Consolidation Act (s. 34) provides that "where a General Service "only is intended to be carried through by an heir, it shall not be "necessary, if the deceased died upwards of *ten* years prior to the date "of presenting the petition for general service as heir to him, to state "or prove the county within which the deceased had his ordinary or "principal domicile at the time of his death, or that such domicile was "furth of Scotland; but in such cases it shall be sufficient (so far as "regards the domicile of the deceased) for the heir to state in his "petition, and if required in the Court of Service to make oath, that "he is unable to prove at what place the deceased had his ordinary or "principal domicile at the time of his death: Provided always, that in "every such case, and in every case of general service where it is "doubtful in what county the deceased had his ordinary or principal

"domicile, the petition for general service as heir to the deceased shall be dealt with, and all relative procedure shall be regulated in or as nearly as may be in the same manner as if it had been proved that the deceased had at the time of his death his ordinary or principal domicile furth of Scotland."

(3) In Special Services it must be proved that the ancestor died infert in the lands or other heritages mentioned in the petition. This is instructed by producing per inventory, which will be signed by the Commissioner, the recorded disposition or other title of the deceased, with the warrants of infertment, where, as in the case of an Instrument of Sasine or Notarial Instrument, these are required. Schedule E appended to the Act of 1874 indicates what documents require to be produced under a petition for completing title, to prove the last investiture or infertment. Infertment of ancestor.

(4) The propinquity or relationship of the petitioner to the deceased must be accurately set forth and proved. The legitimacy of the heir is always presumed unless the contrary be proved, and the propinquity (in the case of a service as heir of line), if recent, is proved by witnesses, two or more, deponing that the claimant was reputed to stand in that degree of propinquity to the deceased which is specified in the petition. Every link in the chain should be distinctly set forth, as any material error may prove fatal to the Service. Where the relationship is of older date than can be instructed by living witnesses, it should be vouched by retours, marriage-contracts, or other authentic writings. Relation-ship.

#### WHERE SERVICE OPPOSED.

*Caveats.*—It is provided by section 31 of the Consolidation Act of 1868 that "The Sheriff-Clerk shall be bound to receive any Caveat against any Petition of Service to be presented to him; and on the receipt of the Petition of Service referred to in the Caveat, or of any official notice of any such petition which may be communicated to such Sheriff-Clerk, such Sheriff-Clerk shall, within twenty-four hours thereafter, write and put into the Post-Office a notice of such petition, addressed either to the agent by whom or to the person on whose behalf the Caveat is entered, as may be desired in such Caveat, and according to the name and address which shall be stated in such Caveat, the Sheriff-Clerk receiving therefor a fee for his own use, of such amount as shall be fixed by Act of Sederunt as aforesaid." Caveats.

*Competing Petition.*—It is by section 35 of the same Act provided that "It shall be lawful to any person who may conceive that he has a right to be served, preferable to that of the person petitioning the Sheriff as aforesaid, also to present a Petition of Service to the Sheriff in manner and to the effect aforesaid, and the same shall be proceeded with in manner hereinbefore directed; and it shall be lawful to the Sheriff, if he shall see cause, at any time before pronouncing decree in the first petition, to sist procedure on the first petition in the meantime, or to conjoin the said petitions, and thereafter to proceed to receive evidence in manner hereinbefore directed, allowing each of the parties not only a proof in chief with reference to his own claim, but a conjunct probation with reference to the claims of such other parties; and the Sheriff shall, after receiving the evidence, pronounce decree on the said petitions, Competing petition.

"serving or refusing to serve as may be just, and shall at the same time dispose of the matter of expenses; and when the accounts thereof shall be audited and taxed in manner after provided, such Sheriff shall decern for the same."

By section 40 of this Act it is further provided that "No person shall be entitled to appear and oppose a Service proceeding before the Sheriff in terms of this Act, who could not competently appear and oppose such Service if the same were proceeding under the brief of inquest according to the law and practice existing prior to the 15th day of November 1847; and all objections shall be presented in writing, and shall forthwith be disposed of in a summary manner by the Sheriff, but without prejudice to the Sheriff, if he see cause, allowing parties to be heard *videlicet* thereon." (a)

#### DECREE OF THE SHERIFF.

Unopposed  
petition.

By section 57 of the Conveyancing Act of 1874, it is enacted that the Sheriff, whether of Chancery or of a county, need not now hold a Court for the consideration or disposal of any unopposed Petition for Service.

It is provided by section 33 of the Consolidation Act of 1868 that, "On considering the said evidence, the Sheriff shall, without the aid of a jury, pronounce decree, serving the petitioner in terms of the petition, in whole or in part, or refusing to serve the said petitioner and dismissing the petition in whole or in part, as shall be just; and the said decree shall be equivalent to and have the full legal effect of the verdict of the jury under the brief of inquest, according to the law and practice existing prior to the said 15th day of November 1847."

Proceedings  
to be trans-  
mitted to  
Chancery.

By section 36 of the same Act the proceedings are directed to be transmitted to Chancery, that the decree may be recorded and extracted; and by section 37 it is provided that the Decree of Service so recorded and extracted shall have the full legal effect of a Service duly retoured to Chancery, and shall not be liable to challenge nor be set aside, except by a process of Reduction before the Court of Session. The procedure in such reductions is regulated by sections 43, 44, and 45 of the Act.

Irregulari-  
ties of pro-  
cedure.

Decrees of Service are by section 52 of the Conveyancing Act of 1874 declared unchallengeable notwithstanding certain irregularities in procedure. The words of the section are as follows:—"It shall not be competent to challenge any judgment or decree of service pronounced in terms of the Act tenth and eleventh Victoria, chapter forty-seven, entitled 'An Act to amend the Law and Practice in Scotland as to the Service of Heirs,' or of 'The Titles to Land Consolidation (Scotland) Act, 1868,' and dated before the commencement of this Act (1st October 1874), or any extract of any such judgment or decree, or any titles following upon such judgment, decree, or extract, on account of any objection to the manner or form in which such judgment or decree was recorded or extracted by the Director of Chancery or his Depute, or on the ground that the manner and form of recording and extracting such judgments or decrees in use by the Director of Chancery, or his Depute for the time, had not been directed or approved of by the Lord

(a) For circumstances in which an objector was held entitled to oppose a proof without presenting a competing petition, see *Sir A. Moncreiff v. Lord Moncreiff*, 1904, 6 F. 1021.

"Clerk Register in terms of the said Acts, or on the ground that evidence was led in the Petition on which such decree followed, and that the decree itself was pronounced before the expiry of the *inducæ* or days of publication prescribed under the tenth section of the former Act, or under the thirty-third section of the latter Act."

By section 46 of the Consolidation Act, a Decree of Special Service duly recorded in Chancery and extracted, unless and until reduced, is declared to have the full legal operation and effect of a disposition in ordinary form of the lands contained in such service granted by the person deceased, being last feudally vest and seised therein, in favour of the heir served, vesting in him a personal right to the said lands, but under the whole conditions, and qualifications of the investiture as set forth or referred to in such extract decree, and rendering the same liable to his debts and deeds.

Decree to have effect of a disposition.

The heir's title may be completed by recording, with warrant of registration in the usual form, the extract Decree of Special Service in the appropriate Register of Sasines, or, without being recorded, a personal right will be carried by the Service, to the heir or successor of the person served.

Completion of heir's title in special service.

Decrees of General Service have always operated as general dispositions or assignations of unexecuted procuratories and precepts, or other personal rights to heritable subjects, and by the Conveyancing Act of 1874 (s. 31) such decree in favour of the heir of a proprietor who has died infest is equivalent to a *mortis causa* general disposition by the proprietor to the heir, to the effect of enabling such heir, or those deriving right from him, to complete a title by Notarial Instrument. We give below the form of an—

Completion of heir's title in general service.

**Extract Decree of Special and General Service in the  
Court of Chancery.**

At Edinburgh, the                      day of                      , in the year  
Nineteen hundred and                      , sitting in judgment                      , Sheriff  
of Chancery, in the Petition of A (*designation*), FOUND and hereby  
FINDS that the deceased B (*designation*), died on or about the  
day of                      , in the year                      (*in General Services there is  
added here—and had at the time of his death his ordinary or principal  
domicile in the County of M, unless where the deceased died upwards of  
ten years prior to presentation of the Petition for Service*), last vest and  
seised in ALL AND WHOLE (*here describe or validly refer to the subjects  
and real burdens, &c., if any*), conform to (*specify the Writ or Writs in  
the usual manner, with date of recording*): That the petitioner is the  
only son and nearest lawful heir in special (*or as the case may be*), of  
the said deceased B in the subjects foresaid; and that the petitioner  
is likewise heir in general of the said deceased B: And therefore

SERVED and hereby SERVES the petitioner nearest and lawful heir in special of the said deceased B in the subjects above described (*and if there are any real burdens, &c.*—but always with and under the real burdens, conditions, &c., before specified or referred to), and likewise nearest and lawful heir in general of the said B, and DECERNED and hereby DECERNS: Recorded on the                      day of                      , in the year                      , and extracted by me, Director of Chancery.

(Signed by Director of Chancery or his depute.)

#### APPEAL, AND REVIEW OF SHERIFF'S JUDGMENT.

Appeal and  
review.

In the form of Appeal in Services there is nothing peculiar. Such appeal is competent—(*First*) *In order to jury trial.*—Any party to a service in which there are competing petitions, or in which any person has competently appeared to oppose a petition, may at any time before proof has begun to be taken by the Sheriff or his Commissioner, remove the proceedings to the Court of Session by a Note of Appeal in the form prescribed for appeals by the Court of Session Act of 1868 (31 & 32 Vict. c. 100, s. 66). It is optional, however, to the Court of Session to appoint the cause to be tried by a jury, but in every case where this is done, and the jury find a verdict, the cause is sent back to the Sheriff from whom it was appealed, with instructions to pronounce a decree in terms of such verdict. (*Second*) *Where the Sheriff has refused to serve, or has dismissed a petition, or repelled the objection of an opposing party.*—In such cases the Court of Session, after considering the appeal, usually remits the case to the Sheriff to serve the successful party.(a)

#### SECTION III

#### SERVICES OF CURATORY, &c.

##### I.—SERVICES OF CURATORY, OR OF GUARDIANS TO THE INSANE.

Briefs of  
furiosity,  
&c.

Persons used to be declared fatuous or furious by the verdict of a jury, commencing upon a brieve. A brieve, on the application of any party having interest, was issued from Chancery, and directed to the Judge Ordinary of the district where the fatuous or furious person resided, with directions to inquire into the state of said person, and if he were found to be fatuous or furious, how long he or she had been in that state; and likewise to inquire who was the nearest male-agnate of twenty-

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(a) In some circumstances when the judgment appealed against was on a preliminary question, the Court remitted to a Lord Ordinary to take the proof. *Maitland v. Maitland*, 12 R. 899; *Sir A. Moncreiff v. Lord Moncreiff*, 6 F. 1021.

five years of age, and if such agnate was provident in his own affairs. By the Court of Session Act of 1868 (s. 101), it was, however, declared no longer competent to direct a brieve for the cognition of a person alleged to be *incompos mentis prodigus et furiosus*, or of a person alleged to be *incompos mentis fatuus et naturaliter idiota*, to the Judge Ordinary. The brieves of furiosity and idiotry formerly in use were abolished, and a brieve from Chancery, written in the English language, was authorised to be issued in lieu thereof. This brieve is directed to the Lord President of the Court of Session, and instructs him to inquire whether the person sought to be cognosced is insane, who is his nearest agnate, and whether such agnate is of lawful age. An Act of Sederunt, dated 3rd December 1868, was passed by the Court of Session to regulate the procedure, and under it, on the brieve being presented to the Lord President, he is directed to issue a precept to messengers-at-arms, commanding them to summon, warn, and charge the person sought to be cognosced, to compare at a time and place to be specified, being not less than fourteen days from the date of service, to hear and see the matter of the brieve duly cognosced and determined. It is directed that the person presenting the brieve shall also, within the said fourteen days, give public notice of the said brieve and precept, once in the *Edinburgh Gazette*, and by advertisement twice at least in a newspaper published within the county, or if there be none such, in the county next adjoining that in which the person sought to be cognosced, resides.

Procedure  
under Court  
of Session  
Act, 1868.

Brieve of  
insanity.

At the time and place specified in the precept, the Lord President, after hearing parties, appoints the person claiming the office of curator to lodge his claim within a certain specified time, and answers to be made thereto within a specified time thereafter. By the same order, if no valid objection be stated to the brieve or regularity of the procedure, the time and place of trial may be fixed, and the necessary directions given for securing the attendance at the trial of the person sought to be cognosced, or that he shall be seen or examined by or in presence of the jury or some of them.

Further provisions for the conduct of the trial, &c., are given in this Act of Sederunt, but it may suffice here shortly to state that the trial may take place either before the Lord President himself, or any other Judge of the Court of Session to whom he may remit the same, and a special jury of twelve, under the procedure and remedies applicable to ordinary civil causes. The verdict of the jury may be unanimous, or by such majority and under such conditions as are competent in other civil trials by jury, and if affirmative of the claim, and no Bill of Exceptions be presented, or notice of motion for a new trial given, within the time usual in ordinary civil causes, the judge who tried the cause may be moved to authorise the clerk to the proceedings to make out and subscribe a formal writing, embodying the verdict of the jury and answering the different heads of the brieve, which shall be transmitted to Chancery after it has been authenticated by the subscription of the judge. The curator must find due caution.

The procedure commences as usual with a Note, which may be presented by the agnate himself; or, as in the example here given, by his agent.

### Note for Brieve of Insanity.

EDINBURGH, .—I, A (*designation*), require  
a brieve of insanity against B (*designation*), at the instance of F  
(*designation*), being the nearest agnate of the said B.  
(Signed) A, W.S.

This note is presented in Chancery, and a brieve issued.

### Brieve of Insanity.

EDWARD THE SEVENTH, by the grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the seas, King, Defender of the Faith—To the Right Honourable the Lord President of the Court of Session, GREETING. WE WILL and COMMAND you to inquire whether B (*designation in full*) is insane, who is his nearest agnate, and whether such agnate is of lawful age. Given at Edinburgh on the                      day of                      , in the year One thousand nine hundred and                      .

After the curator is appointed in manner above explained, he must find caution, and the following is a form of—

### Bond of Caution for the Curator.

I, K (*designation*), CONSIDERING that upon the                      day of                      , F (*designation*) was duly served and cognosced before the Lord President of the Court of Session, nearest agnate, that is kinsman on the father's side, and curator to B (*designation*), son of the deceased D (*designation*), on account of his insanity: AND SEEING that by law such curator is obliged to find due caution for his intromissions: THEREFORE I BIND and OBLIGE myself, my heirs, executors, and successors, as cautioners, sureties, and full debtors, for and with the said F, that he shall make just count, reckoning, and payment to the said B, and to his heirs, executors, and successors, of his whole actings and intromissions with his heritable and moveable estate: AND specially of that part thereof wherewith he OUGHT and SHOULD intromit in virtue of his office of curatory; and to observe and

perform every duty incumbent on him in the terms of the rules prescribed, or to be prescribed for the discharge of his office in all respects, in virtue of the Act 12 & 13 Vict. c. 51, entitled "An Act for the Better Protection of the Property of Pupils, Absent Persons, and Persons under Mental Incapacity in Scotland:" AND that under the penalty of £        sterling over and above performance: AND I, the said F, not only BIND and OBLIGE myself, my heirs, executors and successors to the effect foresaid, but also to relieve my said cautioner of the engagements he has hereby come under on my account: AND we both consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

While this may be said to be the more formal and regular mode of appointing curators to furious and fatuous persons, it may be observed that the Court of Session, *ex nobili officio*, in the majority of cases, appoints a *curator bonis* to persons in this mental condition on summary application at the instance of their relations or others having interest. A petition is presented, stating the circumstances which make the appointment necessary; and along with this there must be produced two medical certificates on soul and conscience from qualified practitioners, instructing the person's inability to manage his affairs. Forms of such petitions, and their requirements, will be found in the third volume of the "Juridical Styles." The petition is ordered to be intimated on the walls of Court, and in the Minute-Book, and to be served on the party, and his or her nearest relatives if it is not at the instance of the latter, with an order for answers, if necessary, within a short specified time; on the expiry of which time, if no objection is made, the appointment takes place as a matter of course. The powers and duties of such curators are prescribed by Act of Sederunt, 13th February 1730; and by the Acts of Parliament, 12 & 13 Vict. c. 51, and 16 & 17 Vict. c. 70, s. 141, and relative Act of Sederunt of 11th December 1879, 47 & 48 Vict. c. 63; 52 & 53 Vict. c. 39; 54 & 55 Vict. c. 44; 61 & 62 Vict. c. 42.

Appoint-  
ment of  
curators  
bonis.

#### SECTION IV

#### SERVICE OF WIDOWS TO THEIR TERCE

By law widows are entitled to the liferent of a third of the heritable subjects, (with certain exceptions), in which their husbands died infest, unless a conventional provision have been accepted by them in lieu of it.

The method of declaring this right, where an arrangement is not other-

wise come to, is by Service upon a Brieve from Chancery directed to the Sheriff of the shire within which the lands lie, who calls an inquest to take proof whether the claimant was wife to the deceased, and in what subjects her husband died infeft. This service entitles her to possess the lands jointly with the proprietor, *pro indiviso*, and to sue the tenants for her just third of the rents. But in order to enable the widow to possess her third share as a separate subject, it remains that the Sheriff shall ken her to her terce by dividing the lands between her and the heir.

The procedure commences as usual with a Note to Chancery, which is generally presented by the applicant's agent.

### Note for Brieve of Terce.

WANTED a Brieve directed to the Sheriff of the County of M, for serving B (*designation*), relict of A (*designation*), to be kened to her terce.

Edinburgh,

19 .

(Signed) D, W.S.,  
Agent for said B.

The brieve obtained is in the following form:—

### Brieve of Terce.

EDWARDUS SEPTIMUS, Dei gratia Britanniarum Rex, fidei Defensor Vice-comiti, et Balivis suis de M. SALUTEM. Mandamus vobis et præcipimus, quatenus dilectæ nostræ B, relictæ quondam A latrici præsentium, haberi faciatis rationabilem tertiam partem suam de OMNIBUS et SINGULIS terris et annuis redditibus, cum pertinen. quæ et qui fuerunt dicti quondam A ejus mariti hæreditarie, infra baliā vestram, quas et quos de nobis tenuit in capite, et de quibus obiit ultimo vestitus et sasitus ut de feodo; Tantum inde facien. quod pro vestro defectu amplius inde justam quærimoniam non audiamus. Teste meipsoā apud Edinburgum die mensis regni nostri anno

19 . Vicecomiti et Balivis suis de M.

When the brieve has been obtained it is presented to the Sheriff of the county within which the lands lie, along with a petition in the following or similar terms:—

**Petition for Service of Widow to Terce.**

Unto the Honourable the Sheriff of M (*or his Substitute  
or Substitutes*),

The Petition of B, residing at N, widow of A (*designation*),

Humbly sheweth,

That the petitioner has procured and produces herewith a Commission from His Majesty's Chancery, dated \_\_\_\_\_, and written, &c. (*clearly describe Brieve*), appointing your Lordship to have her served and cognosed to a just and reasonable terce of ALL AND SUNDRY the lands and annual rents with the parts and pertinents, in which the said A, her husband, died last vest and seised, situated in the County of M, and granting full power and authority to your Lordship to receive the said Brieve, and to cause the same to be proclaimed, and to hold a Court or Courts of Inquest for the trial of the same, and to grant warrant for summoning a sufficient number of fit persons to pass upon the said inquest, and generally to do everything in the premises which may be necessary or suitable, as the said Commission in itself more fully bears.

That F (*designation*), is (*state the relationship*), and heir-at-law of the said deceased A, and P, Q, and R (*designations*) are sisters (*or as the case may be*) and next-of-kin to the said deceased. In these circumstances the present application has become necessary.

May it therefore please your Lordship to appoint a certain time and place for the trial of the said Brieve, and to grant warrant to officers of Court to proclaim the same at the Market Cross of (*specify head burgh of the county*), in common form, and to summon, warn, and charge all persons having, or pretending to have interest, to attend the said inquest, and in special to serve the said Brieve on the said F, and the said P, Q, and R, personally or at their respective dwelling-places, and to summon, warn, and charge them to compear before your Lordship, and also before the inquest to pass upon the trial of the said Brieve, in the hour of cause, with continuation of days, to hear and see the said Brieve duly and lawfully served, or

else to object thereto if they or any of them see cause, with certification as effeirs; as also to grant warrant to summon a jury of good and faithful men, not less than fifteen in number, to pass upon the said inquest, and to authorise the Clerk of Court, if required, to issue a list of jurymen, and also to grant warrant for citing witnesses to appear at said inquest, and to bear leal and soothfast witnessing on oath, in so far as they know, or as shall be asked at them; or to do further or otherwise as your Lordship shall see proper.

According to Justice, &c.

*(Signed by petitioner's agent.)*

If any of the female relatives are married, it will of course be necessary also to cite their husbands, if alive, in the usual way.

Upon this petition the Sheriff's order is endorsed, and execution is made of the brieve and the petition in terms of above prayer. The execution of the brieve is endorsed on it, and returned therewith.

Neither Stair nor Erskine mentions the necessity of proclaiming or executing the Brieve of Terce. They only state that the Sheriff calls a jury of fifteen persons to take proof that the widow was wife to the defunct, and that he died infest in the subjects contained in the claim. As to the first of these heads, it is enough that the jury be satisfied that the marriage was not called in question in the husband's lifetime, and that the claimant was habit and repute his lawful wife. The second head is proved by production of the infestment of the deceased.

On expiry of the *inducæ*, and at the diet of proof, a Claim of Service in the following terms is laid before the jury :—

### Claim of Service.

HONOURABLE PERSONS, &c.—I, B (*designation*), widow of the deceased A (*designation*), SAY unto your Wisdoms that I was lawfully married to the said deceased A, who died upon the                      day of                      , and was holden and reputed his lawful wife during my husband's lifetime: And that the said A died last vest and seised in the fee of ALL AND SUNDRY the lands and other heritages under written, viz. (*insert the description of the lands, annual rents, teinds, &c.*).

HEREFORE I beseech your Wisdoms to find and declare that I was lawful wife of the said deceased A, and to serve and cognosce me to a just and reasonable terce or third part of the whole lands and others above specified, wherein my said husband died infest and seised as said is; and to find that my right thereto commenced at the term of \_\_\_\_\_, being the first term after the death of my said husband, and will continue during my lifetime.

According to Justice, and your Wisdoms' answer.

*(Signed by claimant.)*

After the usual procedure, the inquest pronounce a verdict which, if satisfactory, concludes in the following terms:—

SERVE and COGNOSCE *affirmative*, the said B, relict of the said <sup>Verdict.</sup> deceased A, to a just and reasonable terce or third part of the aforesaid lands of X and others, wherein her said husband died infest and seised, and find that her right thereto commenced at the term of \_\_\_\_\_, being the first term after her said husband's death, and will continue in time coming, during her lifetime, conform to the brieve, claim, and writs produced for instructing thereof in all points.—IN TESTIMONY WHEREOF, &c. (*This is signed by the Chancellor, and there is subjoined*—And the said Sheriff hereby interpones his authority to the above-written verdict, and FINDS, DECERNS, and DECLARES in terms thereof: AND ORDAINS extracts to be given.)

*(Signed by the Sheriff.)*

#### FORM OF KENNING WIDOWS TO THEIR TERCE.

After the brieve is served, the verdict of the inquest pronounced, and the judge's authority interponed thereto, the widow may apply to the judge to be kenned to her terce—that is, to have her third part of the subjects ascertained and distinguished from the two-thirds belonging to the heir. Upon this the Sheriff, by the old practice, repaired to the lands, and after determining by lot whether the division should begin at the east or west, set off the first two acres for the heir and the third for the widow. But it is now customary to make the division on the report of one or more qualified persons as to the value of the lands, their situation, and other particulars. Or the parties may settle their respective rights by a submission to arbiters to value the property, and to set apart for the widow

a farm or farms or other share, equal in yearly value to a third of the whole property. After the division is made, possession is given to the widow by delivery of earth and stone of the ground of the lands; whereupon instruments are taken in the hands of a notary public.

If a remit or reference has been made to valutors to divide the property, the valutors must appear before the Sheriff and depone to the justness of their valuation. Upon advising it, the Sheriff will decern and adjudge her lot to pertain and belong to the widow as her terce of the lands during her life, and then proceed to the terce lands and ken and enter her thereto.

If the Sheriff himself cannot attend, he may grant a precept to any person as Sheriff in that part. In such case the instrument will narrate the precept. The widow may be represented by a procurator.

The process of kenning is not essential except as a title of possession. The widow, on being served, may sue the tenants, or the proprietor as an intrmitter, for her third of the rents.

Though the widow cannot enforce payment of the rents until she be served, yet the service is not to be regarded as constituting her right, for that was already constituted by the husband's infeftment, and emerged by his death. The service only declares it, and so has a retrospect to the term immediately ensuing the husband's death, for which reason she is entitled to the full payment of her third from that term downwards, preferably to any rights or burdens that may have affected the lands in the intermediate period between her husband's death and her own service.

#### *Instrument of Possession after Kenning a Widow to her Terce.*

Instrument  
of posses-  
sion.

AT \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in presence of me, Notary Public, and witnesses subscribing, compeared personally B (*designation*), widow of the deceased A (*designation*), and passed with us and R (*name*), Sheriff of the County of M, to the ground of the several lands and others after mentioned; and there the said B represented that she having procured a Brieve furth of His Majesty's Chancery, directed to the said Sheriff, for finding that she was lawful wife to the said deceased A, and that her husband died infeft in the fee of the said lands, whereby, according to the law and practice of Scotland, she had right to a reasonable terce or third part of said lands; the persons who passed upon the said inquest, after due consideration of the said B's claim, and her said husband's infeftment, had served her to a just and reasonable terce or third part of the lands of X (*here insert the lands and other subjects*) wherein the said A, her husband, died infeft; and that to all which the said Sheriff had interponed his authority, as in the said B's service and judicial acts

thereupon at more length is contained: Wherefore the said B desired and required the said Sheriff, in virtue of his office, to ken her to her terce, and put her in possession of the third that should fall to her upon a proper division: Which desire the said Sheriff finding to be reasonable, he immediately KENNED and ENTERED the said B for her liferent use only, during all the days of her life, in and to ALL AND WHOLE the lands of (*insert a description of the lands set apart for the widow*), being a just and reasonable third part or terce of the lands and others wherein the said A, her husband, died infekt and seised as of fee; and that after due inquiry made and evidence adduced before the said Sheriff, and a division thereupon being made between the heir and the said B (*or state in what other way the division was made*) (a): As also by delivery of earth and stone of the ground of the said lands to the said B, who was personally present and received the same (*or as the case may be*): Whereupon this instrument is taken in the hands of me, Notary Public and Writer in \_\_\_\_\_, before and in presence of E (*designation*) and F (*designation*), witnesses to the premises, specially called and required, and hereto with me subscribing.—IN WITNESS WHEREOF I have subscribed these presents, written on this and the \_\_\_\_\_ preceding pages of \_\_\_\_\_ by G, my clerk, before these witnesses the said E and the said F.

P, *Notary Public.*

E, *witness.*

F, *witness.*

(a) If march-stones are set up, add at the letter (a) in the above form—  
“And by setting up march-stones in all places needful, for bounding the third falling to the said B from the other two-thirds falling to the heir, conform to the law and practice in such cases.”

The further forms of Brieves of Divisions among Heirs-Portioners, Lining, and Perambulation are now so antiquated that we refer those who may desire information regarding them to pp. 330 and 331 of Volume I. of the fourth edition of the “Juridical Styles.”

A narrative of the origin of the Old and New Extents and Valued Rent is given on p. 349 of Volume I. of the fifth edition, to which also we would refer the curious.

# TITLE VI

## DEEDS OF ENTAIL AND RELATIVE DEEDS

### SECTION I

#### DEEDS OF STRICT ENTAIL

When lands are to be entailed it is usual at once to execute a regular deed of entail; but if this cannot from any circumstances be carried out at the time, the object may be effected by the execution of a trust-deed, the ultimate purpose of which is that the trustees shall execute a deed of strict entail of the estate in favour of the persons, and upon the conditions therein specified. We shall, therefore, in the first place, give a style of a Deed of Strict Entail, and then exemplify those relative trust-deeds which have been found necessary or useful in practice. A Deed of Entail should be complete in itself and contain all the necessary clauses. For example, a disposition with a destination in one deed, and prohibitory, irritant, and resolute clauses in another separate deed, cannot be read together as an entail (*Munro*, 1867, 7 M. 250; *Fowler*, 1869, 7 M. 420). But it is competent to reserve power to alter the destination by a subsequent addition or codicil.

#### 1. Disposition and Deed of Entail (*brief Form*).

**Destination.** I, A (*designation*), being desirous to make a strict entail of the heritable subjects after mentioned, DO HEREBY GRANT and DISPONE to myself and the heirs-male of my body, whom failing, to the heirs-female of my body, whom failing, to A B, my only brother, and the heirs-male of his body, whom failing, to the heirs-female of his body, the eldest heir-female always succeeding without division, and excluding heirs-portioners, whom failing, to my own nearest heirs or assignees whomsoever, heritably and irredeemably ALL AND WHOLE (*here describe the lands, and insert or validly refer to the real burdens, conditions, &c., already constituted, if any*), together with my whole

**Conditions.** right, title, and interest, present and future therein: But always with and under the conditions and clause of registration in the

Register of Entails after written, viz. :—Under this condition, that the heirs of entail (a) succeeding in virtue hereof, shall be obliged to record these presents in the Register of Entails, and also in the Books of Council and Session, and also to record these presents in the appropriate Register of Sasines, or otherwise to expedite a valid infeftment hereupon in the lands before disposed, and that within six months after my death, unless I shall have procured these presents recorded as aforesaid, and also completed by registration in the Register of Sasines or by infeftment during my lifetime: AND also under this condition, that the said heirs of entail shall take and possess the said lands under this disposition only, and upon no other title whatsoever, and that they shall use any other title thereto, or to any part thereof which they may acquire, as collateral hereto only, and for no other purpose; as also under this condition, that the said heirs of entail shall be obliged to insert or validly refer to the foresaid destination and the clause of registration in the Register of Entails hereinafter written, in all notarial or other instruments to follow hereon, and all future writs, transmissions, and investitures of or relating to the said lands or any part thereof: AND also under this condition, that all the heirs of entail shall be bound to pay and keep down the interest on all debts and sums of money affecting or that may be made to affect the fee of the said entailed estate or any part thereof, and all annuities affecting the same: AND also under this condition, that the said entailed estate shall not be affectable by or be subject to any terce or courtesy of any wife or husband of any of the heirs of entail, all such rights of terce and courtesy being hereby excluded: AND I assign the writs: AND I assign the rents: AND I oblige myself, and my heirs, executors, and representatives whatsoever, to free and relieve the lands before disposed of all my debts and obligations: AND I reserve my liferent of the said lands, and full power to revoke these presents in whole or in part: AND I dispense with the delivery hereof: AND I authorise registration of these presents in the Register of Entails and grant full power to as my procurators, or to any of the heirs of entail foresaid, to present these presents before the Lords of Council and Session judicially, and procure the same recorded in said register, and that at the expense of the heir of entail in possession at the

Obligation  
to relieve  
lands of  
debts.

Reservation  
of grantor's  
liferent, and  
power to  
revoke.

Clause of  
registration  
in Register  
of Entails.

(a) If the entailer is not himself the institute, the conditions in the deed must be directed against the institute as well as against the heirs.

time: AND I consent to the registration hereof for preservation.—IN WITNESS WHEREOF, &c. (*complete Testing Clause in the usual way*).

## 2. Disposition and Deed of Entail (*fuller Form*).

Narrative  
clause.

Dispositive  
clause.

Real  
burden of  
annuities.

I, A (*designation*), CONSIDERING that I am desirous to execute a strict entail of the heritable subjects after mentioned belonging to me, do hereby DISPONE, CONVEY, and MAKE OVER to myself (*a*) and the heirs-male of my body (*or otherwise as the entailer shall desire*), whom failing (*here follows the rest of the destination*), the eldest heir-female, always succeeding without division, and excluding heirs-portioners throughout the whole course of the succession, whom all failing, to my own nearest heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here describe the lands, and insert or validly refer to the real burdens, conditions, &c., already constituted, if any*), together with my whole right, title, and interest, present and future, therein: BUT DECLARING ALWAYS that the said lands and estate are hereby disposed to myself and the heirs of entail before mentioned, under the real burden of the payment to the persons respectively after mentioned, during their respective lives, of the several annuities hereinafter specified, viz. (*here specify the annuities, and name and design the annuitants*); which annuities shall be respectively payable at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first term of Whitsunday or Martinmas after my death, for the half-year following (*or preceding, as may be desired*), and so forth half-yearly thereafter during the subsistence thereof, with interest at five per cent. from the respective terms of payment during the not-payment of the same, and which annuities and any interest to become due thereon are hereby declared to be real and preferable burdens upon and affecting the lands and estate before disposed, and as such shall be recorded in the appropriate Register of Sasines as part of these presents, or inserted in any Notarial or other Instrument to be expedite hereon, and shall also be inserted or validly referred to in all future transmissions and investitures of the said lands and estate, until the said annuities shall have ceased to be payable or have been extinguished or discharged—otherwise such

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(a) See note, p. 201.

titles, transmissions, and investitures shall be void and null: AND Clause of devolution in event of succession to another estate opening. FURTHER, PROVIDING and DECLARING that whereas it is my wish and intention that my said lands and estate shall not be permanently held and enjoyed along with the lands and estate of Y, presently belonging to

: THEREFORE, in case any of the heirs of entail succeeding to my said lands and estate by virtue hereof shall have previously succeeded or shall subsequently succeed to the said lands and estate of Y, and in case such heir shall at the time of his or her death leave (in addition to an eldest son or other descendant succeeding to the said lands and estate of Y) a second or other younger son, or any descendant of the body of a second or other younger son previously deceased, then, and in that case, my said lands and estate before disposed shall, upon the death of such heir, descend to and devolve upon his or her second and other younger sons successively in their order, and the heirs-male of their bodies, whom failing, the heirs-female of their bodies respectively, excluding the eldest son or heir entitled upon such death to succeed to the said lands and estate of Y, without prejudice nevertheless to such eldest son or the heirs-male or female of his body in their order, having right to succeed to my said lands and estate before disposed, after the failure of such second and other younger sons and the heirs-male or female of their bodies, in case such failure shall happen, but always subject to the provision and declaration before written (a):

AND DECLARING ALSO, as it is hereby expressly PROVIDED and DECLARED, Deed to be accepted under conditions of strict entail. that the before-written Disposition is granted by me, and shall be accepted by the heirs of entail substituted to me as hereinbefore written, under the whole conditions of a Strict Entail, to the effect of prohibiting alienation, contraction of debt, and alteration of the order of succession, and also under the further conditions after written, viz.:—Under this condition, that the heirs of entail succeeding in virtue hereof to the said lands and estate before disposed, Conditions of entail. hereinafter designated as “the entailed estate,” shall be bound to record this Disposition and Deed of Entail in the Register of Tailzies, Entail to be recorded in Register of Tailzies, and feudal title completed. and also in the Books of Council and Session, and also to record the same in the appropriate Register of Sasines, or otherwise to complete a valid feudal title to the said entailed estate within the space of one year after my death, unless the same shall have been done by myself

(a) As to provisions granted by an heir in possession prior to devolution, see *Hunter Blair*, 1 F. 437.

Name and  
arms.

Heirs to  
possess  
under deed  
of entail  
alone.

Provisions  
of entail to  
be inserted  
or referred  
in whole  
titles of  
estate.

No acts to  
be done  
inferring  
adjudica-  
tion or  
forfeiture.

Interest of  
debts,  
annual bur-  
dens, &c.,  
to be kept  
down.

Husband of  
heiress in  
possession  
to bear  
name and  
arms of  
entailer.

in my lifetime: AND also under this condition, that the said heirs of entail shall be bound and obliged to assume, use, and constantly retain in all time after the succession to the said entailed estate shall open to them respectively, the surname of A, and the arms and designation of A of X (a): AND to take and possess the said entailed estate under and by virtue of this Disposition and Deed of Entail, and of the rights and investitures to follow hereon, and by no other right or title whatever which may be inconsistent herewith or prejudicial hereto, and that they shall be bound to use any other title which they may have or acquire to the said entailed estate, or to any part or parts thereof, as collateral hereto only, and for no other purpose whatever: AND that they shall be bound to insert in any instrument to follow hereon the whole destination and order of succession before written, and also the whole conditions of the entail, and also the clause of registration in the Register of Tailzies, and also to insert or validly refer to the said destination and order of succession and conditions of the entail and clause of registration in the Register of Tailzies in all other writs, transmissions, and investitures of the said entailed estate, or of any part or parts thereof, otherwise the same shall be void and null: AND UNDER THIS CONDITION also, that it shall not be lawful to any of the heirs of entail to innovate, alter, infringe, or contravene this entail in any way, or to do any act, civil or criminal, which shall be the ground of any adjudication, eviction, or forfeiture of the said entailed estate, or any part thereof, or in any way affect or burden the same, or the rents thereof, to the prejudice of the succeeding heirs of entail: AND that all the heirs of entail in their order successively shall be bound to pay and keep down the interest on all debts and sums of money affecting, or that may be made to affect, the fee of the said entailed estate, or any part thereof, and also all annuities which may affect the said entailed estate, and also all feu-duties and casualties and public and parochial burdens and other charges properly payable out of the rents of the said estate, and never to allow the said interest, annuities, burdens, and charges, or any part thereof, to fall into arrear: AND also under

(a) See *Hunter v. Weston*, 9 R. 492. If thought advisable, the following addition may also be made to this clause:—And the husband of each of the female heirs of entail who shall succeed to the said entailed estate, shall also be bound and obliged to assume, use, bear, and constantly retain the said surname and arms in all time after his marriage, if his wife shall then be in possession of the said entailed estate, or after the succession thereto shall open to her if his marriage with her shall have previously taken place.

this condition, that the said entailed estate shall not be affectable by or subject to any terce or courtesy of the wife or husband of any of the heirs of entail—all such terces and courtesies being hereby expressly excluded: AND also under this condition, that the said heirs of entail shall be, as they are hereby, prohibited from allowing any adjudication to pass against the said entailed estate, or any part thereof, and as often as any creditor or other person holding any debt or incumbrance affecting or that may be made to affect the entailed estate, or any part thereof, shall call for payment of such debt or incumbrance, or take any step in order to obtain payment thereof, or to bring any part of the entailed estate to sale, the heir of entail in possession for the time shall be bound to pay such debt or incumbrance, or to obtain the same transferred to another creditor, all at the expense of the heir in possession at the time; but nothing herein contained is intended to abridge, or shall abridge, the powers of the heirs of entail under the Entail Acts of charging the said debts or incumbrances upon the said entailed estate, or otherwise taking advantage of the powers conferred by the said Acts: AND also under this condition, that the said heirs of entail shall be, as they are hereby, prohibited from cutting down wood within the policy attached to the mansion-house, unless in the course of necessary management and thinning, except such trees as have begun to decay: AND WITH AND UNDER THIS CONDITION also, that in case any of the heirs of entail succeeding to the said entailed estate shall by any contravention of the entail incur an irritancy or forfeiture of his or her right to the said entailed estate, and the same shall be declared in favour of the next heir of entail in being for the time, and in case thereafter a nearer heir shall exist, although descended of the contravener's body, then and in that case the remoter heir who happened to be the next heir in being at the time of the contravention shall be bound and obliged immediately upon the existence of such nearer heir to denude of the right to the said entailed estate in favour of the said nearer heir so existing, and the heirs hereby called after him or her, subject to all the conditions of the entail, reserving nevertheless to such remoter heir so succeeding upon a contravention as aforesaid the free rents and proceeds of the said entailed estate from the time of his or her succession until the existence of such nearer heir: BUT DECLARING that any annuity to the husband or wife of such

Terce and  
courtesy  
excluded.

Heir in pos-  
session to  
purge ad-  
judications  
led against  
estate.

Cutting  
wood.

Nearer heir  
existing  
after con-  
travention.

Clause  
authorising  
registration.

remoter heir, or any provisions to children which may have been granted by such heir, intended to affect the said entailed estates, or rents thereof, or the heirs of entail succeeding thereto, or which might have that effect, shall cease and become void as affecting the entailed estate upon the said nearer heir coming into existence, and the said entailed estate and rents thereof, and heirs of entail succeeding thereto, shall thenceforth be absolutely freed and disburdened of the same: AND I authorise registration of these presents in the Register of Tailzies, and grant full power and authority to as my procurators, or any of the heirs of entail, to cause present these presents before the Lords of Council and Session judicially, and to procure the same recorded in the Register of Tailzies, and to expedite infestments thereon agreeably thereto and in terms of law, and that at the expense of the heir of entail in possession for the time: AND I assign the writs: AND I assign the rents: AND I oblige myself and my heirs, executors, and representatives whomsoever, to free and relieve the said entailed estate of all my debts and obligations, except those hereby charged upon my said estate: AND I reserve power to alter or revoke these presents at any time of my life: AND I dispense with the delivery hereof during my life: AND I consent to registration for preservation.—IN WITNESS WHEREOF, &c.

If it is desired to entail or settle plate, pictures, or other moveables, as far as that can validly be done, the following clause may be used (a):—

AND further, I, do hereby assign, convey, and make over to myself, and the heirs of entail foresaid, the whole plate and pictures which are in the mansion-house of at the date hereof, or have been temporarily removed therefrom for safe custody in the , and are now deposited therein; which plate and pictures I desire to be preserved as heirlooms by the successive heirs of entail in possession—all as the same are specified in the lists hereto annexed and subscribed by me as relative hereto: AND it is hereby expressly provided and declared that the said plate and pictures shall in all time coming belong to myself and the heirs of entail substituted to me as aforesaid, and shall be held and enjoyed by me and them successively,

(a) As to the effect of this clause, see *Kinnear v. Kinnear*, 4 R. 705; *Sandys v. Sandys*, 25 R. 261; *Adam's Trustees*, 1 F. 1042.

along with the lands and estates hereby conveyed, and as part and portion of the entailed estate, and that it shall not be lawful to, nor in the power of, the said heirs of entail or any of them to leave or bequeath the said plate or pictures or any of them to any other person or persons than those to whom they are hereby specially destined, nor to sell, dispose of, pledge, exchange, gift, or alter them or any of them so as to lessen the value thereof, or to put away the same or any of them on any account whatever, nor shall they suffer or permit the same or any of them to be attached, evicted, or carried off by the diligence of creditors; but they are hereby taken bound, and by acceptance of the said lands and estates and moveable effects under this Deed of Entail they hereby respectively bind themselves, to respect my wishes with regard to the said plate and pictures, and to preserve the same as heirlooms, and to take all proper care of them, so that the said plate and pictures shall be kept unhurt and entire for the use and benefit of the heirs entitled to succeed to the said lands and estate in all time coming: DECLARING always that in case any of the heirs of entail taking or succeeding to the said lands and estate and plate and pictures in virtue of this Deed of Entail shall contravene the before-written prohibitions and conditions or any of them with reference to the said plate and pictures or any part thereof, or shall fail or neglect to obey or perform the said conditions or any of them, not only shall all such acts and deeds of contravention be void and null and of no effect, but also the person so contravening shall for himself only *ipso facto* lose, amit, and forfeit all right, title, and interest which he has to the said lands and estate and plate and pictures, and the said lands and estate and plate and pictures shall thereupon devolve, accresce, and belong to the next heir appointed to succeed, although descended of the contravener's own body, in the same manner as if the contravener were naturally dead and had died before the contravention: AND declaring further, as it is hereby expressly provided and declared, without prejudice as regards the said plate and pictures to the prohibitory, irritant, and resolute clauses hereinbefore written with reference thereto, that the before-written Disposition of the said lands and others and plate and pictures is granted by me, and shall be accepted by the said heirs of entail hereinbefore substituted to me as a strict entail.

### 3. Deed of Revocation of Entail.

I, A (*designation*), CONSIDERING that by Disposition and Deed of Entail dated the                      day of                      , and recorded in the Register of Entails the                      day of                      19                      , I granted and disponed to myself and the heirs-male of my body; whom failing, to the other heirs of entail therein mentioned, ALL AND WHOLE my lands and estate of X, and others therein described, but always with and under the conditions, prohibitions, and provisions therein written, in which Deed of Entail I reserved to myself full power to revoke or alter the same, and that I have resolved to revoke the said deed: THEREFORE I hereby REVOKE the said Disposition and Deed of Entail, with all that has followed or might have been competent to follow thereupon: AND I dispense with the delivery hereof: AND I consent to the registration hereof for preservation, and also to registration in the Register of Tailzies for publication.—IN WITNESS WHEREOF, &c.

If infetment has passed on the entail, a simple deed of revocation will not be sufficient unless it shall also contain dispositive words and executive clauses, in order to constitute a new investiture. Without such words and clauses it will operate merely as a ground of action so as to enable the heir of the granter under the old investiture to adjudge the estate from the heir under the entailed investiture.

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## SECTION II

### TRUST-DEEDS RELATIVE TO ENTAILS

Purposes of  
such trust-  
deeds.

It frequently happens that the estate of the entailer is encumbered with debts, and to discharge these before the entail shall come into operation various schemes have been put in practice according to circumstances of the parties.

1st. The deed of entail has contained express power to the heirs of tailzie to sell so much of the entailed lands as should be sufficient to pay the debts and obligations of the entailer.

Or 2nd. A power has been given to the heir of entail in possession to sell particular parts, specially described, of the entailed estate.

In the first case, under the old law, it was usual to bring a declarator before the Court of Session against the whole heirs of entail to have the amount of the debts due by the entailer ascertained, and on this being done, the Court fixed the value of such of the lands as were sufficient for

paying off the debts, and as might be disposed of most conveniently for the rest of the estate, and granted warrant.

But in the second case, where the lands to be sold were expressly pointed out by the entailor, the heir in possession was in use to sell without any application to the Court.

It was found, however, that in adopting either of the above methods the real intention of the entailor ran a risk of not being carried into execution; for the lands sold were generally purchased by a trustee for the heir of entail at an inadequate price. It has, therefore, of late been the practice to interpose trustees for carrying the entailor's purposes into effect. The form of the trust-deed is necessarily varied, according to the views of the entailor.

Where the debts due by the entailor are inconsiderable, the practice has been adopted of granting a trust conveyance of a certain part of the rents of the estate, or of a fixed annuity out of the estate, calculated to clear off the debts of the entailor. A regular deed of entail is at the same time executed, on which the trust-deed operates as a burden. But where the debts of the entailor are considerable, and where in all probability it will be necessary to sell a part of the entailed estate, it has been a common practice either to execute, along with a regular deed of entail, a relative trust-deed, conveying the whole entailed lands to trustees, for the purpose of paying off the entailor's debts, and having the effect of suspending the operation of the entail during the subsistence of the trust, or to convey to trustees the truster's whole estate, including the lands which he desires to be entailed in trust, to realise the estate other than the lands to be entailed, and to apply the same, with the rents arising from the lands to be entailed, during the subsistence of the trust, in payment of the truster's debts, and after these have been paid off, to entail the lands. An example of a trust-deed applicable to the last method, which is the one to be preferred, will now be given.

Entail burdened with trust-deed.

Estate conveyed in trust to pay debts, and thereafter entail.

### 1. Trust-Disposition and Settlement for Payment of the Truster's Debts, and thereafter making an Entail of his Lands.

I, A (*designation*), having resolved to make the following settlement of my affairs in the event of my death, do hereby DISPONE, ASSIGN, CONVEY, and MAKE OVER to F, G, and H (*designations*), and to such other person or persons as may be hereinafter named by me or assumed by the trustees or trustee acting under these presents for the time, and to the acceptors and survivors, or acceptor and survivor of the persons before named, or to be named or assumed as aforesaid, as trustees for executing the trust hereby created (all of whom, or the trustees or trustee acting for the time, are hereinafter referred to as "my trustees"), the majority of my trustees accepting and acting and resident in Great Britain for the time being always a quorum, and to the assignees of my trustees ALL AND SUNDRY, the whole estate, property, and effects, heritable and moveable, real and

Conveyance to trustees.

personal, of every kind and wherever situated, now belonging to me, or which shall belong to me or be subject to my disposal at the time of my death; AND IN PARTICULAR, without prejudice to the foregoing general conveyance, ALL AND WHOLE my lands of X and others, viz. (*here describe or validly refer to the lands intended to be specially conveyed, and real burdens, conditions, &c., already constituted, if any*), with all my right, title, and interest present and future in the whole estate, property, and effects, generally and particularly before conveyed, and the whole writs, titles, vouchers, and instructions thereof:

Purposes of trust.

1. Payment of debts, death-bed and funeral expenses, expenses of trust management, public burdens, &c.

2. Mansion-house, &c., to be kept in repair.

Game to be kept up.

3. Estate repairs and improvements.

4. Interest of trustee's debts and marriage contract provisions to be paid.

DECLARING ALWAYS that these presents are granted by me in trust for the uses and purposes following:—THAT IS TO SAY (*In the first place*) For payment of all my just and lawful debts, sick-bed and funeral expenses, and the expenses of executing and managing this trust and all feu, blench, and teind duties, and minister's stipend, and all public, parochial and local burdens of every kind exigible furth of the lands of X and others hereinbefore specially conveyed; (*In the second place*) They shall pay such sums as shall appear to them to be necessary or proper to be expended from time to time for putting or keeping in repair the mansion-house of X, and furniture and other effects therein, and offices, gardens, and pleasure-grounds thereof, and for adding to the furniture and other effects in the said mansion-house, and for keeping up the game on my said lands and estate—all which it is my desire that my trustees shall keep up and maintain at their discretion during the subsistence of this trust; (*In the third place*) They shall pay all sums which shall appear to them to be necessary or proper to be expended in keeping up and maintaining the buildings, fences, drains, roads, and plantations on the said lands of X and others, in good condition and repair, or for erecting any additional buildings, or making any additional fences, drains, roads, or plantations, or executing any other works of any kind on the said lands and others which they may consider necessary for the improvement, management, cultivation, or letting of the same, or for the working or letting of any stone quarries or minerals therein; (*In the fourth place*) They shall pay the interest then due or to become due upon all debts owing by me at the time of my death, whether heritably secured or not, and the interest on any provisions payable to my children under and in terms of the Contract of Marriage entered into between me and B, my wife, dated , or under any bond of provision granted or to be

hereafter granted by me in favour of my said children or any of them—so long as the said debts and provisions shall remain unpaid; and my trustees shall also pay as they become due any annuities which may have been granted by me to my wife or any other person or persons; (*In the fifth place*) It shall be in the power of my trustees, at their discretion, to allow the heir who, but for the existence of the trust hereby created, would under the entail hereinafter directed to be made be entitled to the possession of my said lands of X and others, to occupy and possess free of rent, feu-duties, public burdens, and taxes the mansion-house of X, and furniture and other effects therein, and offices, gardens, and policies pertaining thereto, with the free use and enjoyment of the game on my said lands of X and others, and that either by a permanent arrangement and appointment to continue during the trust and the life of such heir, or by a temporary arrangement for any shorter period; and I hereby direct my trustees to pay to such heir for the time being, an annuity of £                      sterling free of income-tax and all other deductions (said tax being paid by my trustees) during his life and the subsistence of the trust until the execution of the Disposition and Deed of Entail after mentioned, and that at two terms in the year, Whitsunday and Martinmas, by equal portions in advance, beginning the first term's payment thereof at the first of these terms which shall happen after my decease, for the half-year following, and so forth half-yearly thereafter, with a fifth part more of each term's payment of the said annuity of penalty in case of failure in punctual payment of the same, and interest of the said sum at the rate of five per centum per annum, from the said respective terms during the non-payment; which annuity shall be an alimentary provision to such heir for the time being, and it shall not be in his power to assign or otherwise dispose of the same by anticipation, nor shall the same be liable for his debts or deeds, or be subject to the diligence of his creditors; (*In the sixth place*) They shall apply the whole residue and remainder of the trust-estate (other than my said lands of X and others, and furniture and other effects in the mansion-house), and prices and proceeds thereof, and interest or other income accruing thereon, including the free yearly surplus or balance of the rents of my said lands of X and others remaining in their hands from time to time, after fulfilment of the prior or other purposes before written, in or towards payment of the capital of the debts which shall be due by me at my death, or which

5. To allow heir of entail to occupy mansion-house.

Allowance to heir.

Allowance to heir declared alimentary.

6. Residue to be applied in payment of debts.

7. Direction  
to entail  
lands.

Discharge  
to trustees  
by institute  
good  
against suc-  
ceeding  
heirs.

may affect my said lands of X and others, and of the provisions to my children which have been or may hereafter be granted by me as aforesaid, and of any legacies which I may hereafter bequeath to any person or persons by any writing under my hand, and that in such order or by such payments as my trustees shall think proper or find most convenient; and (*lastly*) After the whole debts, legacies, and provisions, before mentioned, shall have been paid and discharged, I direct and appoint my trustees to convey and make over my said lands of X and others hereinbefore disposed, by a valid and formal Disposition and Deed of Strict Entail (*a*) to and in favour of the heirs-male of my body (*or such heirs as may be intended to be first favoured*), whom failing (*here insert such further destination as may be desired*), whom failing, to my nearest heirs and assignees whomsoever, the eldest heir-female and the descendants of her body always excluding heir-portioners and succeeding without division throughout the whole foresaid course of succession; and upon such Disposition and Deed of Entail being executed by my trustees, and completed in manner after directed, the trust hereby created shall cease and determine, except as regards any surplus funds then remaining in the hands of my trustees, and, subject to the said exception and the direction hereinafter written relative thereto, the right of my trustees shall thereupon be extinguished, and my said lands and estate shall thenceforth be possessed and enjoyed by the institute or heir of entail entitled thereto under the Disposition and Deed of Entail to be executed by my trustees as aforesaid, freed and disburdened of this trust: Provided always, that in case, after the whole debts, legacies, and provisions before mentioned shall have been paid and discharged as aforesaid, any annuities granted by me shall still subsist, the future payment of such annuities during the subsistence thereof shall be secured and made a charge by my trustees by way of real burden or otherwise upon my said lands and estate, and the institute and heirs of entail acquiring and succeeding to the same, in such form and manner as my trustees may think fit: AND provided also that the institute or heir of entail, entitled at the date of the execution and delivery of the said Disposition and Deed of

(a) In connection with all trust-deeds to make entails there ought always to be a clear direction to execute a strict entail. If trustees with such a direction make an invalid entail the institute cannot challenge it to the prejudice of subsequent heirs (*Octerlony v. Octerlony*, 4 R. 587; *Sandys v. Sandys*, 25 R. 261).

Entail to the possession of the said lands and estate shall be bound to grant and deliver to my trustees a full discharge and ratification of their actings, intromissions, and management in the execution of the trust hereby created, so far as the trust can then be wound up, which discharge and ratification shall bind and be good against all the succeeding heirs of entail; AND WITH REGARD to any surplus funds which may remain in the hands of my trustees at the date of the execution of the said Disposition and Deed of Entail, I direct that in case such funds shall not exceed the sum of £ Funds in trustees' hands unapplied at close of trust. sterling, they shall pay and make over the same, with any securities they may hold therefor, to the institute or heir of entail then entitled to the said lands and estate, upon a receipt and discharge to be granted to them by such institute or heir; but if such funds shall exceed said sum of £ Money in trustees' hands unapplied at close of trust. , they shall retain the same, and shall employ such funds, with the free yearly income thereof, as opportunity offers, in the purchase of lands, contiguous or as nearly as possible contiguous, to my said lands and estate of X, and they shall settle the lands so purchased under strict entail in the same terms as are hereinbefore directed with reference to my said lands and estate: DECLARING that, in case after making investments in land to be entailed as aforesaid, and after making payment of the expenses attending the purchase and entail of such lands, and making full provision for all expenses attending the closing of the trust, my trustees shall have in hand a balance of trust funds not exceeding the sum of £ Clauses to be inserted in entail. sterling, they shall pay and make over the same, with any securities they may hold therefor, to the institute or heir of entail in possession of the said lands for the time, upon a discharge to be granted to them by such institute or heir, for the said sum and of their whole actings, intromissions, and management, with reference to the said surplus funds; which discharge shall be binding upon all future heirs of entail: AND it is hereby provided that the entail or entails to be executed by my trustees shall be so framed as to bind the institute as well as the substitute heirs of entail, and shall contain all clauses, conditions, and provisions proper and necessary for constituting a valid and strict entail according to the law of Scotland, effectual against creditors as well as *inter hæredes*, and shall also contain a provision binding the institute, and all the heirs of entail in their order successively, respectively to pay and keep down the interest on all debts and sums of money affecting, or that may be

made to affect, the fee of the lands and others thereby disposed or any part thereof, and also all annual rents and annuities which may affect the said lands and others, and also all public and parochial burdens and other charges properly payable out of the rents of the said lands and others, and never to allow the said interest, annual rents, annuities, burdens, and charges, or any part thereof, to fall into arrear; and also prohibiting the institute and heirs of entail from allowing any adjudication to pass against the said lands and others, or any part thereof, and obliging the institute and heirs of entail, as often as any creditor or other person holding any debt or incumbrance affecting, or that may be made to affect, the said lands and others, or any part thereof, shall call for payment of such debt or incumbrance, or take any step in order to obtain payment thereof, or to bring the said lands and others, or any part thereof, to sale, to pay such debt or incumbrance, or obtain the same transferred to another creditor, all at the expense of the institute or heir of entail in possession for the time, provided always that nothing therein contained shall prevent an heir of entail from exercising all rights competent to him under the Entail Acts: AND the said entail or entails shall also contain an obligation binding the institute and all the heirs of entail to assume, bear, and constantly retain, in all time after their acquiring or succeeding to the said lands and others, the surname of M and the arms and designation of M of X, and also a provision and declaration that the said lands and others shall not be affectable by or subject to any terce or courtesy to the wife or husband of the institute, or of any of the heirs of entail, and an express exclusion of all terces and courtesies: AND the said deed or deeds of entail shall, so far as the terms and conditions hereof are not hereby expressly prescribed, be framed in such terms and under such conditions as my trustees shall direct and appoint, and shall contain an express clause authorising registration in the Register of Tailzies, and my trustees shall cause the same to be recorded accordingly in said register, and also in the Books of Council and Session, and the title of the institute or heir under the same to be feudalised by registration thereof in the Register of Sasines or otherwise: AND I grant power to my trustees, at their discretion, to sell and dispose of the whole or any part of the estate, property, and effects falling under this trust, excepting always the said estate of X to be entailed as aforesaid, and that either by public roup or private bargain, at such

Powers of  
trustees.  
To sell.

price or prices and on such conditions as my trustees shall think proper: Provided always that in case of the same being necessary for the payment of the debts, legacies, and provisions before referred to, my trustees shall also have power to sell and dispose of such part or parts of the said estate of X (but always excluding the mansion-house and offices and policies thereof), as may be necessary for the purpose of paying the said debts, legacies, or provisions, and that by public roup or private bargain as aforesaid, but the above-mentioned power shall only be exercised by my trustees in case they shall find it necessary to do so to provide funds for the purposes before referred to: AND in place of such sale my trustees may, if they in their discretion see fit, convey the said estate of X in the said Disposition and Deed of Entail under the burden of such debts, legacies, or provisions so far as remaining unpaid: AS ALSO to fix and settle the compositions and casualties payable by vassals in the said lands and estate, and to grant precepts or Writs of *Clare Constat* and Charters of *Novodamus* to vassals, when it shall appear to my trustees to be proper so to do: AS ALSO to grant long leases and feu-rights of any part or parts of the said lands and estate to such person or persons, and for payment of such rents and feu-duties, and on such terms and conditions as my trustees shall think proper: AS ALSO to make any excambions which they shall consider desirable: AND it is hereby expressly provided that neither purchasers, lenders, tenants, debtors, nor any other person or persons transacting with my trustees shall be anywise concerned with the application of the sums to be paid by them, or with any of the conditions and provisions herein contained, but they shall be effectually discharged and secured by the discharges and other writings to be granted by my trustees, or by any factor, commissioner, or attorney authorised by them: AND I hereby nominate and appoint my trustees to be my executors: AND I assign the rents of the lands and others hereinbefore conveyed: AND I assign the writs: AND I reserve power to myself to revoke or alter these presents, in whole or in part: AND I reserve my own life-rent: AND I dispense with the delivery hereof during my life: AND I consent to registration hereof for preservation. — IN WITNESS WHEREOF, &c.

To settle  
composi-  
tions and  
casualties.

To grant  
feu-rights.

To excamb.  
Parties  
transacting  
with  
trustees to  
have no  
concern  
with trust  
purposes.

Trustees to  
be execu-  
tors.

In many cases it may be thought advisable, especially if the entailor has any lands which he has in view to sell, to adopt the plan of making an effectual entail of the land which he wishes to be preserved, and giving

the heirs of entail full possession thereof at once, and making a separate relative trust-deed of the remainder of his estate, including his whole moveable or personal estate, with instructions to realise the same, and apply the proceeds in payment of debts and other charges. If that course be adopted, the necessary variations on the above form of trust-deed will readily suggest themselves. It may be further observed, that in trusts of this kind, the closing of the trust may generally be accelerated under the Entail Acts by the heir paying off the debts, and then disentailing. If, therefore, the entailer desires that the trust should be kept up for a specific period, he would require to make special provisions for that purpose, *e.g.* by creating a liferent right or otherwise.

## 2. Trust-Disposition for Purchase of Lands *to be settled in terms of a Deed of Entail already executed.*

Narrative  
clause.

I, A (*designation*), CONSIDERING that of even date with these presents (*or as the case may be*) I have executed a Disposition and Deed of Entail of my lands and estate of X and others in favour of myself and the heirs-male of my body, whom failing, the other heirs therein mentioned, and that it is my intention that the said entailed estate shall not only be relieved of all debts and obligations due by and incumbent on me at the time of my death, but that any additional lands and other heritages which I may hereafter purchase during my life shall be added to said entailed estate; and that my means and estate, (other than my said entailed lands and estate of X and others, and such additional lands as I may purchase and entail) shall be realised, and the proceeds thereof employed in the purchase of lands to be entailed and settled in like manner with my lands and estate above mentioned: THEREFORE I DISPONE, ASSIGN, CONVEY, and MAKE OVER (*here take in the destination to trustees, as in Form 1*), and to the assignees of my trustees, ALL AND SUNDRY the whole estate, property, and effects, heritable and moveable, real and personal, of every description, and wherever situated, now belonging to me, or which shall belong to me or be subject to my disposal at the time of my death, with the whole writs, titles, vouchers, and securities thereof, and all my right, title, and interest present and future therein, but excepting always from this conveyance my said lands and estate of X and others, and also the whole household furniture and other moveable effects belonging to me which shall be in the mansion-house of X, and offices thereof at the time of my death, which I hereby leave and bequeath to the heir of entail succeeding at my death to said lands and estate, in virtue of the foresaid Dis-

Dispositive  
clause.  
Conveyance  
to trustees.

position and Deed of Entail: And I BIND and OBLIGE myself, and my heirs, executors, and representatives whomsoever, to grant all writs and deeds requisite and necessary for making the before-written general conveyance complete and effectual: DECLARING ALWAYS that these presents are granted by me in trust (*here take in the purposes, or such of these as may be applicable from Form 1 down to the end of the fifth purpose, and then say*)—(*In the sixth place*) My trustees shall hold the whole residue and remainder of my estate, property, and effects falling under the trust hereby created (other than the lands belonging to me in fee-simple at the time of my death) in trust, to realise and convert the same into money as soon as may be convenient after my death, and to apply the proceeds thereof when so realised, in the purchase of such lands and other heritages, as nearly contiguous as may be to my said entailed estate of X as my trustees shall consider eligible, to form an addition or additions thereto, and they shall take the title to the lands and others to be so purchased by them in their own names as trustees foresaid; and (*lastly*) On the residue of my trust-estate being realised and applied in the purchase of lands and others as aforesaid, I direct and appoint my trustees to convey and make over the whole lands and other heritages then vested in them, including the lands belonging to me in fee-simple at the time of my death, and also the lands to be purchased and acquired by my trustees as before mentioned, by a valid and effectual Deed of Strict Entail to and in favour of the institute or heir of entail then in possession of my said entailed lands and estate of X, whom failing, the substitute heirs of entail called or entitled to succeed to him therein, and with and under the whole conditions, prohibitions, and other clauses contained in the entail of my said estate of X, which, in so far as the same may be subsisting for the time, shall be *verbatim* inserted in the Deed of Entail to be executed by my trustees: AND the entail or entails to be executed by my trustees shall be so framed as to bind the institute as well as the heirs of entail; and my trustees shall cause the same to be recorded in the Register of Entails, and to be feudalised by registration thereof in the appropriate Register of Sasines or otherwise, and also to be recorded in the Books of Council and Session, all at the expense of my trust-estate: AND the institute in the Deed or Deeds of Entail to be executed by my said trustees shall be bound to grant and deliver to my trustees a full discharge and ratification of all their actings,

Residue to be realised and applied in purchase of land.

Direction to execute entail.

Directions to record entail.

Discharge to trustees to be good against succeeding heirs.

Application  
of balance  
of funds in  
hand.

Income to  
be paid to  
heir of  
entail.

intromissions, and management in the execution of the trust hereby created, which discharge and ratification shall bind and be good against all the succeeding heirs of entail: AND DECLARING that in case, after making investments in land to be entailed as aforesaid, and payment of the expenses attending the purchase and entail of such lands, and full provision for the expenses of closing the trust, my trustees shall have in hand a balance of trust funds, not exceeding the sum of £                    sterling, they shall pay and make over the same, with any securities they may hold therefor, to the person who shall then be in possession of my said lands and estate of X and others, as the institute or heir of entail therein: AND until the entail or entails shall have been executed by my trustees, and completed as aforesaid, they shall pay over to the person who, if the entail or entails had been executed, would have been for the time entitled to the possession of the lands to be entailed, the free rents, interests, and other annual income accruing from the trust funds and estate vested in them, after deduction of all charges and burdens affecting the same, and of all expenses of management (*here will follow clauses giving powers to the trustees, and appointing them to be executors, &c., as in Form 1, supra.*)

### 3. Deed of Propulsion.

A Deed of Propulsion differs from an ordinary conveyance only in the reference to the destination and conditions of the entail, and the nature of the reservations in the granter's own favour with which he may burden the conveyance. Applications to the Court under any of the Entail Statutes, where propulsion has taken place, in the case of an entail dated prior to 1st August 1848, must be made in view of section 22 of the Entail Amendment Act of 1853, and section 13 of the Entail Amendment Act of 1868.<sup>(a)</sup>

I, A (*designation*), CONSIDERING that I am heir of entail, infeft and in possession of the lands and estate of X and others hereinafter described, and that B (*designation*), my eldest son, is the heir of entail next entitled to succeed to me therein, and that for certain good causes and considerations, but without any price being paid to me therefor, I have agreed to grant in his favour the conveyance hereinafter written of said lands and estate, but always under the reservations and burdens hereinafter expressed: THEREFORE I do hereby

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(a) A part of the estate cannot be propelled to the effect of enabling the heir to whom it is propelled to disentail it (see *Viscount Dupplin v. Hay*, 10 M. 89). Section 13 of the Act of 1868 appears to be limited to the whole estate also.

DISPONE to and in favour of the said B, and the heirs of his body, and to the other heirs specified in a Disposition and Deed of Entail (*or otherwise, as the case may be*), of the said lands and estate executed by the deceased E (*designation*), dated the                      day of                      , in the year                      , and recorded in the Register of Tailzies on the                      day of                      , in the year                      (*or recorded in the, specify Register of Sasines and date of registration*), heritably and irredeemably, ALL and WHOLE (*here describe in full, or validly refer to the description of the entailed lands and estate in terms of Schedule (O) of the Conveyancing Act, 1874, and refer to any real burdens, conditions, &c., other than those of the entail, in terms of Schedule (D) of the Consolidation Act, 1868*), with the parts and pertinents thereof, and the whole right, title, and interest therein of me, the said A, as heir of entail in possession thereof, but the said lands and others before described (*or referred to*) are hereby disposed always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (*or clause authorising registration in the Register of Tailzies, as the case may be*) contained in the said Disposition and Deed of Entail, dated and recorded as aforesaid (*or in the deed or conveyance recorded in the Register of Sasines, specifying the register and date of registration, as the case may be*): DECLARING ALWAYS, as it is hereby expressly provided and declared, that this conveyance is granted by me, and shall be accepted by the said B and his foresaids under the express reservation and burden of my full liferent right and enjoyment of the said entailed lands and estate before described (*or referred to*), with full power to me, without the consent of the said B, or of any other heir of entail, to uplift, receive, and discharge or assign the rents and profits of the said lands and estate, to remove tenants, and to grant leases of the same, or of any part or portion thereof, for such space and on such terms and conditions as I shall judge proper, and as I might have done before granting these presents, and to grant feus or building-leases of the same, or of any part or portion thereof, and also sites for schools or churches or other buildings, on such terms and conditions as I may think proper, but subject always to the conditions, provisions, and limitations of the said Disposition and Deed of Entail, and imposed or to be imposed by statute on proprietors of entailed estates in Scotland: AS ALSO reserving full power and liberty to me to thin or cut down the trees and wood now growing, or which may grow, upon the said

lands and estate, and to sell or dispose thereof at pleasure, but so as not to injure the amenity of the said lands and estate, and subject always to the provisions, conditions, and limitations foresaid: AS ALSO generally to do every other matter or thing, in connection with the said lands and estate, which may be considered an act of ordinary administration: AND DECLARING FURTHER, as it is hereby expressly provided and declared, that the said conveyance is hereby granted, and shall be accepted by the said B and his foresaids, and the said lands are hereby disposed under the express burden of the following provisions, granted by me as heir of entail aforesaid (*here specify any provisions by way of jointure, or annuity, or otherwise, already granted in favour of the wife and children of the heir in possession or previous heirs; or if none such exist, instead of the above clause insert the following reservation*—AS ALSO reserving to me, as fully in all respects as if these presents had never been granted, the right to exercise all powers conferred by the said Disposition and Deed of Entail upon the heirs in possession of said lands and estate, or conferred, or to be conferred, by statute on the heirs of entail in possession of the entailed estates in Scotland, to charge the said entailed lands and estate hereby conveyed or the rents thereof, and the heirs succeeding thereto, with provisions in favour of C, my present wife, or of any wife I may hereafter marry, and in favour of the children and issue of predeceasing children, (a) of my present or any future marriage, other than the heir who may, for the time, be entitled to succeed to said lands and estate); WITH ENTRY at the date hereof: AND I assign the writs: AND I assign the rents, but subject always to my liferent right as aforesaid: AND I bind myself to free and relieve the said B and the heirs of entail foresaid of all feu-duties, casualties, and public burdens: AND I grant warrandice from my own fact and deed only: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

#### 4. Discharge by an Heir of Entail of his Claim for *Improvement Debts.*

I, A, heir of entail in the possession of the entailed estate of R, CONSIDERING that, on the                      day of                      19   , I presented a petition to the Lords of Council and Session, setting forth that I

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(a) 38 & 39 Vict. c. 61, s. 10.

had, between the                      day of                      19   , and the date of presenting the said petition, expended in permanent improvements upon the said entailed estate, within the meaning and intent of the Acts (*specify the Entail Acts under which improvements have been made*), a sum of £                      sterling, and praying for authority from the Court, under the provisions of the said Acts, to uplift the sum of £                      sterling, being the price of certain superiorities, parts of the said entailed estate, which had been sold by me to the M Railway Company, and which price was consigned in the L Bank of Scotland, all as set forth in the said petition, and to apply the same, with the interest which had accrued thereon, in repayment *pro tanto* of the said sum of £                      sterling expended by me in permanent improvements as aforesaid, and in payment of the expenses of the said petition and proceedings thereon; and that, after sundry proceedings under the said petition, the Lord Ordinary, by interlocutor dated the                      day of                      19   , found that I had, within the period mentioned in the said petition, expended the said sum of £                      sterling (*or as the case may be*) in permanent improvements upon the said entailed estate, and authorised the application of the said consigned sum of £                      sterling, and interest, in repayment *pro tanto* to me of the said expenditure, and in payment of the expense of the said application to the Court: AND NOW SEEING that I have received payment from the said L Bank of Scotland, of the sum of £                      sterling, being the amount of the said consigned sum, with interest thereon from the                      day of                      19   , or at least will obtain the warrant of the Court for payment of the said sum on this discharge being approved of by the Lord Ordinary, and that, after payment of the sum of £                      , being the amount of taxed expenses of the said petition and procedure thereon, there has been applied by me in repayment *pro tanto* of the said expenditure the sum of £                      sterling: THEREFORE I DO hereby DISCHARGE all claim competent to me, or to my heirs, executors, and successors, against the said entailed lands and estate, and against the heirs of entail succeeding to me therein in respect of the foresaid expenditure made by me in permanently improving the said estate: BUT THAT ONLY to the extent of the said sum of £                      sterling, RESERVING ALWAYS all claims competent to me or my foresaids in respect of the said expenditure beyond the said sum of £                      sterling: AND I consent to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

## SECTION III

## DISENTAILS

11 & 12 Vict.  
c. 36, ss. 1  
and 3.

By the Rutherford Act power is conferred, under certain conditions, on any heir of entail in possession of an entailed estate who is of full age, to acquire such estate in fee-simple, by applying to the Court of Session for authority to execute, and executing and recording in the Register of Tailzie under the authority of the Court, an instrument of disentail in the form and manner provided in the Act. The power so conferred has been extended by the Entail Amendment (Scotland) Act, 1875, and the Entail (Scotland) Act, 1882.

16 & 17 Vict.  
c. 94.

Under the fourth section of the Entail Act, 1853, an heir of entail may first execute the instrument of disentail, and thereafter apply to the Court for authority to record it in the Register of Entails. In connection with disentails there are certain distinctions between "old" and "new" entails. An entail dated before 1st August 1848 (date of passing of the Entail Act of 1848) is an old entail. An entail dated after that Act is a new entail. Under the 28th section of the Act of 1848 it is provided that the date when the Act of Parliament, deed or writing, placing money under trust, or directing land to be entailed first came into operation, is to be the date of any entail afterwards made whatever may be its actual date (see *Black v. Auld*, 1 R. 133; *Bruce v. Johnston*, 1 R. 740). On the other hand, this section does not apply to a *mortis causa* deed of entail, the date of which is held to be its actual date, and not the date of death, when it comes into operation (*Riddell, Petitioner*, 1 R. 462).

11 & 12 Vict.  
c. 36, s. 1;  
and 38 &  
39 Vict. c. 61,  
s. 4.  
New entails.

Disentail may be effected under these Acts, and as follows, viz. :—

In the case of new entails—

(1) The heir in possession (including in this term the institute), if born after the date of the entail and of full age, may disentail without the consent of any heir-substitute.

(2) If born before the date of the entail and of full age, he may disentail with consent of the heir next in succession, being heir-apparent (that is, the heir next in succession to the heir in possession, and whose right of succession, if he survive, must take effect), such heir apparent being born after the date of the entail.

(3) If of full age, he may disentail (section 3 of 1882 Act), if he shall be the only heir in existence, without any consent; or if he shall obtain the like consents, as are required by the third section of the 1848 Act, in the case of old entails.

Old entails.

In the case of old entails—

(1) The heir in possession, if born after 1st August 1848, and of full age, may disentail without any consents.

(2) If born before 1st August 1848, he may disentail with consent of the heir-apparent born on or after 1st August 1848.

(3) If of full age, he may disentail if he shall be the only heir of entail in existence for the time without any consent or with the consents, of the whole heirs of entail, if there be less than three, in being at the date of such consents and at the date of presenting the application to the Court for authority to disentail; or otherwise, if he shall have obtained the consents of the three nearest heirs who at the said dates are for the time entitled to succeed to the estate in their order successively immediately after such heir in possession; or otherwise, if he shall have obtained the

consents of the heir-apparent under the entail, and of the heir or heirs, in number not less than two, including such heir-apparent, who in order successively would be heir-apparent. In all cases where the next heir or heirs require to consent they may do so by themselves, if of age, but otherwise, by their *curator ad litem* (1882 Act, s. 12), and if they or their curator refuse or fail to consent, their expectancy or interest in the entailed estate may be valued, and their consent dispensed with (1875 Act, s. 5; 1882 Act, s. 13).

By the 1848 Act, s. 26, money derived from the sale or disposal of any portion of an entailed estate, or of any interest therein, or for damage, or money invested in trust for the purchase of lands to be entailed on the same heirs and under the same fetters, can be acquired in fee-simple; and by the same Act (s. 27) money invested for the purchase of land to be entailed or land directed to be entailed, can be acquired in fee-simple in the same way as an entailed estate itself. See a similar provision, 1882 Act, s. 26.

By the 1882 Act, s. 19, an heir of entail or his tutors, &c., may apply to the Court for an order of sale of the estate or part of it, or of lands held in trust to entail, or part of them. By section 23 the price is consigned, and various provisions are made for its being applied in payment of debt, and invested, and held as an entailed fund which can be disentailed in the same way as the entailed estate could have been; and (s. 27) provides that the price shall be "entailed estate" within the meaning of the Entail Acts. The disposition to the purchaser is to be granted at the sight of Court (s. 25).

The schedule annexed to the Rutherford Act contains the following form of an—

### 1. Instrument of Disentail.

AT (*state place*), the (*state date*), in presence of (*name notary* Narrative clause. *public*), Notary Public, and of the witnesses subscribing, I (*name and designation of heir in possession*), heir of entail (*a*) in possession of the lands and others after mentioned, viz. (*take in full description from titles*), (*b*) which lands and others are held by me under a Deed of Entail, (*c*) dated (*state date of entail*), and recorded (*state particulars of registration*) (*a*), take instruments in the hands of the said notary

(*a*) If the granter is institute under the entail, he will be described as institute of entail in possession.

(*b*) It is usual to insert the full description from the titles; but when this is not the same as in the entail, it is better to insert the description in the latter, and sometimes both descriptions are inserted.

(*c*) Here add—"Granted by A (*designation*), in favour of himself and the heirs of entail therein mentioned," or *as the case may be*. Where the deed of entail is in the form of a Bond of Tailzie or Procuratory of Resignation and Tailzie, add after the words "Deed of Entail"—"Consisting of a Bond of Tailzie," or *as the case may be*. In the case of many entailed estates there have been excambions, but these are not deeds of entail, though they have to some extent the same effect. They are relative deeds and need not be here mentioned. Conveyances of lands brought under the entail by virtue of the provisions of the Lands Clauses Consolidation Act of 1845 are usually treated as entails, and are here referred to.

public subscribing, that the said lands and others are now held by me free from the conditions, provisions, and clauses prohibitory, irritant, and resolute of the entail, by virtue of the Act (*specify this Act*) (b): AND I consent to the registration hereof in the Register of Tailzies, and also in the Books of Council and Session and others competent, therein to remain for preservation, and thereto constitute my procurators, &c.(c)—IN WITNESS WHEREOF I and the said notary public have subscribed this instrument of disentail (*complete the testing clause in ordinary form*).

(*Signature of heir of entail in possession.*)

(*Signature of notary public*), N. P.

A B. *witness.*

C D. *witness.*

Where part only of an estate is disentailed, the instrument will set forth that he is heir in possession of the entailed estate of X, comprehending, *inter alia*, All and Whole the lands of A, B, and C, which lands and others are held, &c. (*here describe the entail*); and after the word "subscribing," the instrument will set forth "that All and Whole the following lands and others being parts and portions of the said lands of A, B, and C, viz.—(1) The lands and farm of D, &c., all as shown on a plan (if one be used), are now held," &c.

In many cases lands are held under a number of entails of separate parcels or estates, in which case it seems sufficient to say—"Which lands and others are held by me under the following deeds of entail or some one or more of them, viz."

When lands are disentailed it would seem to be doubtful whether the disentail would have the effect of enlarging securities on the life interest. See the observations of Lord Kinnear in the case of *Somervell* (case of disentail), 6 F. 926.

## 2. Disposition and Conveyance in Fee-Simple, of Trust Lands directed to be Entailed, but which have been acquired in Fee-simple under Section 27 of the Rutherfurd Act.

Narrative  
clause.

We, A, B, and C (*designations*), trustees acting under the Trust-Disposition and Settlement, executed by the deceased D (*designation*), dated (*specify date and date of registration in Books of Council and*

(a) When the description and the reference to the deed of entail are lengthy it is usual to insert here—"I, the said (*name of heir in possession*)."

(b) All of the Acts founded on are sometimes referred to at length; but it is sufficient to say—"By virtue of the Entail Acts" (Short Titles Act, 1892).

(c) This clause now runs—"And also in the Books of Council and Session for preservation," the rest of the clause being omitted.

*Session if so recorded*), CONSIDERING that the said D, by Disposition and Deed of Entail granted by him, dated \_\_\_\_\_ and recorded in *(specify registration in the Register of Entails, and also in the Books of Council and Session, in the usual manner)*, granted and disposed his lands of X and others, therein described, to himself and the heirs-male of his body, whom failing *(here recite the remainder of the destination, or so much as brings down to the branch under which the petitioner after mentioned has succeeded, and say—*"and other heirs of entail therein specified); but always with and under the conditions, provisions, prohibitions, and clauses, irritant and resolute *(or clause authorising registration in the Register of Entails)*, therein written: FURTHER, CONSIDERING that the said deceased D, by the said Trust-Disposition and Settlement, disposed and conveyed to us *(here insert the trust destination so far as necessary shortly, or if other trustees were named and are dead, say—*and the other trustees therein named, all now deceased, *or otherwise)* as trustees therein mentioned, his whole means and estates, heritable and moveable, excepting his said lands of X; but in trust only for the uses and purposes therein specified, and, *inter alia*, with directions to realise and apply the residue of the said trust-estate in the purchase of lands and heritages in manner therein mentioned, and to execute an entail of the lands and others to be purchased in terms of the directions therein contained, in favour of the person who, under the Disposition and Deed of Entail before narrated, should have right for the time to the said entailed estate of X and others, and the other heirs of entail appointed to succeed thereto, but always with and under conditions, provisions, prohibitions, and clauses irritant and resolute *(or clause of registration in the Register of Entails, as the case may be)*, similar to those contained in the said Disposition and Deed of Entail, and to cause the entail to be so executed by us to be registered in the Register of Tailzies, and in the appropriate Register of Sasines, or otherwise to cause a valid feudal title to be completed under the same, all as more fully expressed in the said Trust-Disposition and Settlement: FURTHER, CONSIDERING that the said D died on or about the \_\_\_\_\_ day of \_\_\_\_\_, and that we accepted of the trust created by the said Trust-Disposition and Settlement, and in execution thereof have realised the trust-estate, and after due fulfilment of the other and prior purposes of the trust, have invested a portion of the residue of the said trust-estate in the purchase

of lands and heritages, and that we now stand infeft as trustees foresaid in the lands so purchased, but have not yet executed an entail thereof: FURTHER, CONSIDERING that upon the death of the said D, he was succeeded in the said lands of X and others by his eldest son F (*designation*), as his nearest and lawful heir of tailzie and provision under the Disposition and Deed of Entail before narrated, that the said F is now in possession of the same, and that he is the person who, if the lands and other heritages now held by us as trustees foresaid had been entailed, and the trust-estate held by us had already been invested in the purchase of land and the land entailed in terms of the said Trust-Disposition and Settlement, would be the institute or heir of entail in possession of the lands and others so entailed, and who in that case might, by virtue of the provisions of the Entail Acts, have acquired such land in fee-simple by executing and recording an instrument of disentail in terms of the said Acts: AND FURTHER, CONSIDERING that the said F lately presented a petition to the Lords of Council and Session in virtue of the said Acts, setting forth, *inter alia*, that he was desirous to acquire in fee-simple, and for his own absolute use, the whole lands and heritages which had been purchased by us as aforesaid, and which are hereinafter disposed, and any other means and estate now held by us as trustees under the foresaid Trust-Disposition and Settlement, and that in terms of the provisions of the said Acts, and to obtain their Lordships' warrant and authority, for the conveyance to him the said F in fee-simple, of the said lands and other heritages, and for the conveyance or payment and delivery to him, for his own use, of the whole other property, means, and effects held by us in trust, subject to such claims (if any) as we, the said trustees, or any other parties, might have upon the said trust-estate: AND that, after sundry procedure had taken place in the foresaid petition, Lord \_\_\_\_\_, Ordinary, on the \_\_\_\_\_ day of \_\_\_\_\_, pronounced the following interlocutor (*take in interlocutor authorising conveyance to F in fee-simple*): AND NOW SEEING that the said F has required us to grant these presents in his favour which have been adjusted under the directions of the Court, and that the said F has by Discharge and Ratification and Obligation, executed by him in our favour, dated \_\_\_\_\_, and recorded in (*specify Register of Sasines and date of recording*), not only exonerated and discharged us as trustees foresaid of our whole actings and intromissions under the trust created by the said Trust-Disposi-

tion and Settlement, but has also ratified and approved of the same, and bound and obliged himself and his heirs, executors, successors, and representatives whomsoever, to free and relieve us and all others concerned, of and from all claims and demands, if any, competent against us as trustees foresaid, or against the said trust-estate: THEREFORE we, as trustees foresaid, in virtue of and in obedience to the said interlocutor, do hereby DISPONE, ASSIGN, CONVEY, and MAKE OVER Dispositive clause. to the said F and his heirs and assignees whomsoever in fee-simple, heritably and irredeemably, the whole lands and other heritages vested in or belonging to us as trustees foresaid; and also the whole other property, means and effects vested in us, or to which we have right as belonging to or forming part of the trust-estate of the said deceased D, and falling under the provisions, and applicable to the purposes of the trust created by the said Trust-Disposition and Settlement, including the sum of £                      in cash which we have paid to the said F, and particularly and without prejudice to the before-written general conveyance, ALL AND WHOLE (*here describe or validly refer to the lands vested in the trustees, and insert a special conveyance of any other estate held by them*), with our whole right, title, and interest, present and future, in and to the lands and other heritages, and property, means, and effects hereinbefore conveyed: AND WE OBLIGE ourselves, and our successors, as trustees foresaid, at the expense of the said F, to execute and deliver all deeds and other writings which may be necessary for making these presents effectual, and that whenever required: DECLARING ALWAYS that these presents are granted under the burden of any claims which any person or persons may have upon us as trustees foresaid, or which we or any other person or persons whatever may have upon the trust-estate and effects hereinbefore conveyed: AND we assign the writs, and have delivered Assignment of writs and rents. the same conform to inventory: AND we assign the rents: AND we Clause of warrandice. grant warrandice from fact and deed; but excepting therefrom all leases or missives of lease granted by us, or presently subsisting, for all the years and terms thereof still unexpired, and also excepting all feu-rights of any portions of the said lands and others; without prejudice nevertheless to the right of the said F to quarrel or impugn the same or any of them on any ground in law not inferring recourse against us as trustees foresaid, or as individuals: AND we consent to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

It is recommended that in all cases of disentail or acquisition of lands or trust-estate in fee-simple, the heir of entail if he wishes to make it clear that the entail destination is at an end, should dispoise the estate and lands or trust-estate, as the case may be, to himself and his heirs and assignees whomsoever (see *Gray*, 24th May 1878, 5 R. 820); but care should be taken not by this means to cause any claims by the superior for casualties to come into operation which might otherwise not arise under the old investiture.

Form  
authorised  
by Court  
of deed of  
consent to  
disentail.

The 1848 Act, s. 51, authorised the Court of Session, by Act of Sederunt, to fix the form in which deeds of consent under the Act should be granted, and, along with an Act of Sederunt, dated 18th November 1848, the Court issued the following form of a deed of consent :—

### 3. Deed of Consent to Disentail.

I, A B (*state the designation and place of abode of the party, and whether he is in minority or of full age, (a) or that he is of the age of twenty-five, if that be requisite*), the heir next in succession being heir-apparent of F G (*name and designation*), the heir (*or institute, as the case may be*) in possession (*or in whatever character the consent is granted, here set it forth ; and if granted by more than one heir, state their names and other particulars as above ; and if it is granted by or with the consent of the guardians, one or more, of a pupil or minor or incapable person, state the name, designation, place of abode, and character or office of every such guardian, and the name and other particulars, as above, of the pupil or incapable person*), under a Deed of Entail, dated (*here set forth the date of the entail, and, if recorded in the Register of Tailzies, the date of registration*), executed by the now deceased C D of E, in favour of (*here insert the designation (b)*) of ALL AND WHOLE (*here insert the leading name of the estate, or a general description of the same, and state the county or counties in which the same is situated*): Do hereby CONSENT to the disentail (*c*) by the said F G, of the whole lands, estate, and others contained in the said Deed of Entail (*or if the consent applies to a part only, say—“of the following parts of the*

(a) It is not necessary now that the heir should be *twenty-one* years of age (38 & 39 Vict. c. 61, s. 4 ; 45 & 46 Vict. c. 53, s. 12).

(b) It is not apparently necessary to insert the whole destination, though in practice this used generally to be done (see *M'Lagan*, 34 S. L. R. 18). If not inserted at length, it should be referred to as specified in the deed of entail.

(c) If the deed of consent applies to a deed of conveyance or security, an excambion, a lease, or a feu, or the disposal of trust money, or other property directed to be entailed, or any other act or deed to which the statute requires consent, the necessary alterations will be here made, stating shortly the nature of the proposed transaction.

"said lands and others contained in the said Deed of Entail," *and then proceed to describe them particularly*), and that in the form and manner authorised by an Act of the 11th and 12th of Victoria, c. 36, entitled, "An Act for the Amendment of the Law of Entail in Scotland" (*here add reference to any other Acts of Parliament in virtue of which the disentail has been carried through; and if the consent is given under the fourth section of the Rutherfurd Act, and subject to conditions, limitations, or restrictions, which the party consenting wishes to insert in the Deed of Consent, insert such conditions, limitations, or restrictions here*): AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF (*add a testing clause in legal form*).

(*Signature of party or parties.*)

H I, *witness.*

M N, *witness.*

**4. Deed of Consent to Disentail, granted by and on behalf of Heirs of Entail of an Estate held under two or more Deeds of Entail.**

I, A (*name*), at present residing in \_\_\_\_\_, wife of B (*design-* Narrative clause.  
*nation*), also at present residing in \_\_\_\_\_, being of the age of  
 twenty-one years complete, and being at the date of the execution  
 hereof, the first in order of the three nearest heirs of entail for the  
 time entitled to succeed to the lands and estate after mentioned in  
 their order successively immediately after C (*designation*), the heir (*or*  
*institute*) in possession under the Deeds of Entail after specified, with  
 the special advice and consent of the said B my husband, and I the  
 said B, for myself, and as taking burden on me for my said wife, and  
 we both with one consent, and I, D (*designation*), at present residing  
 in \_\_\_\_\_, tutor *ad litem* to E (*name*), eldest son of the said A  
 and B, and residing \_\_\_\_\_, appointed by interlocutor pro-  
 nounced by Lord \_\_\_\_\_, Ordinary, on the \_\_\_\_\_ day of  
 \_\_\_\_\_, in the application made to the Court of Session by the  
 said C, for authority to disentail and acquire in fee-simple the said  
 lands and estate; and I, F (*designation*), residing in \_\_\_\_\_, tutor  
*ad litem* to G, second son of the said A and B, and residing with them,  
 appointed by the said interlocutor of Lord \_\_\_\_\_, Ordinary,  
 in the said application—the said E and G, who are both in

pupillarity, being at the date of the execution hereof on their behalf the second and third respectively in order of the three nearest heirs of entail for the time entitled to succeed to the said lands and estate in their order successively immediately after the said C, under the Deeds of Entail before referred to, which are—  
*(First) (here describe the several Deeds of Entail in their order in usual form, and insert the destination of heirs in each deed so far as necessary, referring to the lands contained in each, and the county or counties, all in terms of the preceding example)*, do hereby for our respective rights and interests, and in our respective capacities  
**Consent.** foresaid, severally CONSENT to the disentail by the said C of the whole lands and others contained in and held by him under the several Deeds of Entail, and that in the form and manner authorised by an Act of the 11th and 12th years of the reign of Her late Majesty Queen Victoria, chapter 36, entitled “An Act for the Amendment of “the Law of Entail in Scotland,” and an Act of the 16th and 17th years of the reign of Her said Majesty Queen Victoria, chapter 94, entitled “An Act to extend the benefits of the Act of the Eleventh “and Twelfth years of her present Majesty, for the Amendment of “the Law of Entail in Scotland,” and of the Act *(here set forth the other Entail Acts, or say—*and of the subsequent Entail Acts): AND we, the whole parties hereto, consent to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

**5. Deed of Consent to Conveyance in Fee-simple of Lands, &c., held under Trust-Settlement, granted by a Nearest Heir of full age, and two Minor Heirs, with consents of their Curators ad Litem.(a)**

**Narrative  
clause.**

I, A (*designation*), residing at \_\_\_\_\_, being of the age of twenty-one years complete; AND we, B, eldest son, and C, second son (*give full names and special designations, if any*), both of the said A, and both residing with him at \_\_\_\_\_ aforesaid, being both past the age of fourteen years complete, with the special advice and consent of D (*designation*), residing at \_\_\_\_\_, curator *ad litem* to me,

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(a) This deed is framed on the assumption that the consent of the three nearest heirs is required. Where this is not necessary the requisite alterations will easily be made.

the said B, and of E (*designation*), residing at \_\_\_\_\_, curator *ad litem* to me, the said C, both appointed by interlocutor pronounced by Lord \_\_\_\_\_, Ordinary, on the \_\_\_\_\_ day of \_\_\_\_\_, in the application after mentioned, made to the Court of Session by F (*designation*), in terms of the provisions of the Act (or Acts) of Parliament therein referred to, for authority to acquire in fee-simple the trust-estate, funds, and other effects after mentioned; AND we, the said D and E, as curators *ad litem* foresaid, on behalf of our respective constituents, CONSIDERING that the deceased G (*designation*), by his Trust-Disposition and Settlement (*here will follow a narrative of the trust-deed similar to that given in the form of Disposition and Conveyance, p. 224*): FURTHER, CONSIDERING that the said F is the person who, if the said estate, funds, and other effects had been invested in land which had been entailed in terms of the directions contained in the said Trust-Disposition and Settlement, would have been the institute (or heir) in possession of such entailed lands and others, and might, by virtue of the Act of 11 & 12 Victoria, chapter 36, entituled "An Act for the Amendment of the Law of Entail in Scotland," and other subsequent Entail Acts, have acquired to himself such lands and others in fee-simple, by executing and recording an instrument of disentail in terms of the said first-mentioned Act; AND that we the said A, B, and C, are the persons who in that case would be at the date hereof the three nearest heirs for the time entitled to succeed to such entailed lands and others in our order successively immediately after the said F, and whose consents would have been required to the acquisition of the same in fee-simple by the said F; AND NOW SEEING that the said F is desirous of acquiring to himself in fee-simple and for his own use the whole estate, funds, and other effects now belonging to or forming part of the said trust-estate, and has made application to the Court of Session for that purpose, under the provisions of the said Act of the 11th and 12th Victoria, chapter 36, and subsequent Entail Acts; AND that we, the several parties to these presents, are willing to consent to his so acquiring the said estate, funds, and effects, in manner after written: THEREFORE I, the said A, and WE, the said B and C, with consent and concurrence of the curators *ad litem* appointed to us respectively as before mentioned, and WE, the said D and E, as curators *ad litem* foresaid, DO hereby, for the respective rights and interests of us and of our said constituents, CONSENT that the said G, <sup>Consent.</sup> H, and I, the trustees now acting under the said Trust-Disposition

and Settlement, or the survivors or survivor of them, or other persons or person acting for the time in the execution of the trust created by the said Trust-Disposition and Settlement, shall DISPONE and CONVEY to the said F in fee-simple and for his own use, the whole lands and other heritages, and also the whole other estate, property, and effects now vested in or belonging to them as trustees foresaid, and generally the whole trust-estate heritable and moveable, real and personal, now belonging to or under their control as trustees foresaid, but always subject to and under burden of the just and lawful claims, if any, which the said trustees or any other persons may have upon the said trust-estate, and that they shall execute such Disposition and Conveyance, or Dispositions and Conveyances, or other deeds or instruments, as may be necessary for these purposes: AND WE FURTHER CONSENT that the Court of Session shall grant such warrant or other authority as may be necessary for the said F acquiring right to the said trust-estate, funds, and effects in fee-simple and for his own use, and obtaining possession thereof accordingly, all in manner authorised by the statutes before referred to: AND we consent to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

**6. Deed of Consent to an Excambion of Entailed Lands, for other Lands belonging to the same Proprietor in Fee-Simple.**

**Consent.** I, A (*designation*), &c. (*here specify the nearest heir or heirs of entail and curators, if any, and other necessary particulars of the narrative clause, as already shown, p. 229*), DO hereby CONSENT to the excambion by the said F of ALL AND WHOLE (*here describe the lands to be given off*), which lands and others before described form part of the said estate of X: AND that in exchange for ALL AND WHOLE (*here describe the lands to be received in exchange*), which lands and others form part of the estate of N belonging to M (*designation*): AND WE FURTHER severally CONSENT to a Deed or Contract of Excambion, or other necessary deeds or writings, being made and executed at the sight of the Court of Session by the said F and M, for the purpose of carrying the said excambion into effect, all in manner authorised by the statutes before referred to: AND we consent to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

In connection with deeds of consent the provisions of section 8 of the 1848 Act and section 17 of the 1882 Act may be kept in view; but the

Formerly deeds of consent were granted voluntarily, either gratuitously or for payment of compensation, as agreed upon; but now, if not voluntarily granted, the compensation can be ascertained and paid or secured and the consents dispensed with (1875 Act, s. 5; 1882 Act, ss. 13 and 18; *Farquharson*, 1886, 14 R. 231).

In applications to disentail, or to sell, alienate, dispoſe, charge with debts or incumbrances, lease, feu, or exchang an entailed eſtate, or any portion of it, it is now ſufficient to produce an affidavit ſetting forth ſuch debts and provisions as are not ſecured by having been placed on the record (i.e., *the appropriate Register of Sasines*); and, in lieu of the above affidavit, the petitioner may lodge a ſchedule, ſigned and deponed to by him as correct, ſetting forth “that there are no entailers’s debts or other “debts and no provisions to huſbands, widows, or children affecting, or “that may be made to affect the fee of the eſtate, or the heirs of entail “that are not ſecured by having been placed on the record; or, if there “are any ſuch debts or provisions that are not ſo ſecured, ſetting forth as “regards ſuch debts or provisions, the amounts or ſums thereof in figures, “the dates when the ſame were conſtituted, and the names and designations “or reſidences of the parties who, at the date of the application, are in “right of the ſame.”(a)

**SCHEDULE** of Entailer's or other Debts, and Provisions to husbands, widows, or children, affecting or that may be made to affect the fee of the entailed lands and estate of X and others in the County of L, or the heirs of entail succeeding thereto, that are not secured by having been placed on the record, as at (*here give the date of the application*).

(a) 38 & 39 Vict. c. 61, s. 12 (5); see also 11 & 12 Vict. c. 36, s. 6.

petition in which this schedule is produced, and now is creditor, having acquired right thereto by progress from the said C, the original creditor.

2. The principal sum of £                      sterling or thereby, being the estimated amount expended by the petitioner since on permanent improvements on the said entailed estate of the nature contemplated by the Entail Acts (*or otherwise, as the case may be*), and in respect of which amount he is entitled, with the authority of the Court of Session, to grant a bond of annual rent for the whole, or to create a charge on the fee of the said entailed estate (other than the mansion-house, offices, and policies) to the extent of three-fourth parts thereof (*or as the case may be*).

3. The sum of £                      or thereby, being the total amount of the estate duty including settlement estate duty (if any be exigible) payable by the petitioner in respect of the death of A B, the preceding heir of entail in possession of the said estate, which estate duty is a charge upon the said estate by virtue of the Finance Act, 1894.

4. Any sums of money or provisions which may become payable in virtue of an obligation by the petitioner contained in the Antenuptial Contract of Marriage between him and B (*full name*), his wife, dated                      , whereby, in virtue of the Act 5 George IV. c. 87, he bound himself and the heirs of entail succeeding to him in the said entailed estate of X to make payment to the lawful child or children of his said marriage who should be alive at his death and should not succeed to the said entailed estate, or to the person or persons in their right, of the sums of money or provisions following, viz.:—If there should be one such child, £                      sterling; if two such children, £                      sterling; and if three or more such children, £                      sterling, but subject always to the whole conditions and declarations contained in the said Act and subsequent Entail Acts.

There are                      children now existing of the marriage, besides the heir prospectively entitled, upon the petitioner's death, to succeed to the said entailed estate, viz. (*here give the names and designations or residences of the younger children; and, if the provisions of younger children have been settled in their marriage contracts in terms of the Entail Statutes, state the fact, and the names and designations or residences of the marriage trustees, if any, to whose names it has been transferred*).<sup>(a)</sup>

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(a) If there are any provisions granted by an heir apparent, with consent of the heir in possession, in favour of wife or children, these should also be set forth.

5. Except as above set forth, there are no entailer's debts or other debts, and no provisions to husbands, widows, or children, affecting or that may be made to affect the fee of the said entailed estate, or the heirs of entail, that are not secured by having been placed on the record.

*(Signed by petitioner.)*

J K, J.P.

At \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ in the  
year One thousand nine hundred and \_\_\_\_\_,  
in presence of J K (*designation*), one of Her Majesty's  
Justices of the Peace for the \_\_\_\_\_ of \_\_\_\_\_,  
COMPEARED G of X, Esq., the heir of entail in possession of the said  
entailed lands and estate of X and others, and the petitioner in an  
application presented to the Court of Session, under the Act 11 & 12  
Victoria, chapter 36, entitled "An Act for the Amendment of the  
"Law of Entail in Scotland," and subsequent Entail Acts mentioned  
in the said application, for authority to disentail the said estate  
(*or otherwise as the case may be*), the first deliverance in which is  
dated \_\_\_\_\_, and agreeably to the provisions of section 12,  
sub-section 5 of the Act 38 & 39 Victoria, chapter 61, who, being  
solemnly sworn and examined, depones that to the best of the  
deponent's knowledge and belief what is contained in the foregoing  
schedule is correct: All which is truth as the deponent shall answer  
to God.

*(Signed by petitioner.)*

J K, J.P.

If there are no debts or provisions requiring to be specified, the  
schedule will simply contain the following statement:—

There are no entailer's debts or other debts, and no provisions to  
husbands, widows, or children, affecting or that may be made to affect  
the fee of the said lands and estate, or the heirs of entail, that are not  
secured by having been placed on the record.

*(Signed by petitioner.)*

J K, J.P.

And then will follow the deposition as above set forth.

## TITLE VII

### HERITABLE SECURITIES

#### SECTION I

#### BONDS AND DISPOSITIONS IN SECURITY

##### 1. Bond and Disposition in Security in ordinary Form.

I, A (*name and design the borrower*), GRANT me to have instantly BORROWED AND RECEIVED from B (*name and design the lender*) the sum of £                      sterling: WHICH SUM I BIND myself, and my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said B, his executors (*or his heirs excluding executors*) or assignees whomsoever, at the term of (*here insert the date and place of payment, thus—Whitsunday* Nineteen hundred and six, within the head office of the Royal Bank of Scotland in Edinburgh, *or as the case may be*), with a fifth part more of liquidate penalty in case of failure, and the interest of said principal sum at the rate of five pounds per centum per annum from the date hereof to the said term of payment, and half-yearly, termly, and proportionally thereafter during the not-payment of the same, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said interest at the term of Whitsunday next for the interest due preceding that date, and the next term's payment thereof at Martinmas following, and so forth half-yearly, termly, and proportionally thereafter during the not-payment of the principal sum, with a fifth part more of the interest due at each term of liquidate penalty in case of failure in the punctual payment thereof: AND IN SECURITY of the personal obligation before written, I DISPONE to and in favour of the said B and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, ALL AND WHOLE (*here describe or refer to the subjects as in Schedule (O)*)

of the Conveyancing Act, or Schedule (G) of the Consolidation Act; and if the subjects are held under any real burdens, conditions, provisions, or limitations, insert these after such description or reference, or refer to them in, or as nearly as the circumstances may require in, the form of Schedule (D) of the Consolidation Act); AND THAT IN REAL SECURITY to the said B and his foresaids of the whole sums of money above written—principal, interest, and penalties: AND I assign the rents: AND I assign the writs: AND I grant warrandice: AND I reserve power of redemption: AND I oblige myself for the expenses of assigning and discharging this security: AND on default in payment I grant power of sale: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF (*testing clause*).

*Bonds by Curators Bonis Tutors, Minors, Trustees, &c., or over Lands of Married Women.*—Variations in the form of Bonds and Dispositions in Security occur in connection with the character or rights of the granters—as, for example, where the deed is granted by a minor with consent of his curators, by trustees, or by a special commissioner. As the necessary variations can be readily adjusted from the forms already given in the case of dispositions (Title II.), we do not repeat them here.

In the case of securities granted by minors with consent of their guardians, it may be very important to preserve evidence of the due and beneficial application of the money lent, and if applied in whole or in part in paying off debts previously existing, it is in general advisable to take assignments to these debts in favour of the creditor in the bond and disposition in security, to be held as collateral securities of his loan.

In the case of a security over lands belonging to a married woman, the obligation for payment is not granted by her, but only by her husband, though she is the principal party to the disposition in security, her husband, of course, consenting and concurring therein for his own interest and as taking burden on him for her. The wife should also ratify the deed judicially, as in the case of a disposition (p. 70), the necessary alterations being attended to. The deed may be in the following terms:—

## 2. Bond and Disposition in Security by Spouses over Lands belonging to the Wife.

I, A (*name and design husband*), GRANT me to have instantly BORROWED and RECEIVED from C (*designation*) the sum of £ sterling: WHICH SUM I BIND myself, and my heirs, executors, and representatives whomsoever (*complete personal obligation as in form on p. 236*): AND IN SECURITY of the personal obligation before written, I, B (*full name*), wife of the said A, with the special advice and

consent of my said husband, and I, the said A, for my own right and interest, and as taking burden on me for my said wife, and we both, with joint consent and assent, DISPONE to and in favour of the said C and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, ALL AND WHOLE (*here describe or validly refer to the subjects, and if these are held under any real burdens, conditions, &c., insert or refer to them as before shown, p. 236*); AND THAT IN REAL SECURITY to the said C and his foresaids of the whole sums of money above written—principal, interest, and penalties: AND we, with joint consent and assent foresaid, assign the rents: AND we assign the writs: AND we grant warrandice: AND we reserve power of redemption: AND I, the said A, OBLIGE myself for the expenses of assigning and discharging this security: AND on default in payment we, the said A and B, with joint consent and assent foresaid, grant power of sale: AND we consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.(a)

Where a Bond and Disposition in Security is granted over lands belonging to the husband, but in which the wife has a right of liferent, &c., the personal obligation will, as in the previous example, be granted by the husband alone, and the disposition in security will be in the following terms:—

### 3. Bond and Disposition in Security over Lands belonging to *Husband in which a Wife has right of Liferent, &c.(a)*

AND IN SECURITY of the personal obligation before written I, the said A, with consent of B, my wife, for all right of liferent, conjunct fee, terce, annuity, or other right, legal or conventional, which she has or may have in or affecting the subjects hereinafter disposed, and I, the said B, for my own right and interest, with the special advice and consent of my said husband, and I, the said A, as taking burden on me for my said wife, and we both, with joint consent and assent, DISPONE, &c.

Where a Bond and Disposition in Security is granted in favour of a married woman exclusive of her husband's rights, the deed will narrate that the money is advanced out of her separate estate, and will be in the following terms:—

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(a) This deed ought to be judicially ratified by the wife.

**4. Bond and Disposition in Security in favour of a Married Woman, exclusive of *Jus mariti* and right of administration of Husband.**

I, A, GRANT me to have instantly BORROWED and RECEIVED from C (*design as wife of B, &c.*) out of her separate estate the sum of £            sterling: WHICH SUM I BIND myself, and my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said C, her executors (*or her heirs excluding executors, as the case may be*) or assignees whomsoever, but exclusive always of the *jus mariti* and right of administration of the said B, her husband, or of any other husband whom she may hereafter marry, and that at the term of (*&c., complete personal obligation as shown on p. 236*): AND IN SECURITY of the personal obligation before written, I DISPONE to and in favour of the said C and her foresaids, but exclusive always of the *jus mariti* and right of administration of the said B, or of any other husband whom she may hereafter marry, heritably (*&c., as in Form 1*).

*Bonds to or by Banks and Public and Private Companies.*—It is important to keep in view that when Bonds and Dispositions in Security, or similar deeds, are granted to incorporated banks or public companies, the description of the payees to be introduced in the obligation and disposition in their favour will be regulated by the terms of the Act of Parliament or Royal Charter under which they are incorporated, and in the case of companies incorporated under the Companies Acts, by the provisions of these Acts and of the Memoranda of Association under which they are constituted. Such memoranda will also regulate the borrowing powers of the company. A provision as to the execution of deeds by limited companies will be found in section 56 of the Conveyancing Act of 1874. When unincorporated societies grant bonds, their directors or office-bearers should be mentioned *nominatim*, and should bind themselves as such directors or office-bearers and their successors in office, and the funds and property of the society.

In bonds by private or unincorporated companies not having office-bearers, and by firms, the personal obligation will be by the company or firm and all the partners as individuals jointly and severally.

Securities to private or unincorporated companies or firms will narrate that the loan is granted from funds belonging to the firm, and will be taken to the whole or to certain of the partners as individuals, and the survivors and survivor of them *in trust*, for behoof of the company or firm and partners thereof, according to their interests, and to the assignees of the trustees, or of the survivors or survivor of them. The deeds of security cannot be directly taken in favour of these last-mentioned companies or firms by their company or firm names.

*Bonds to Trustees or Guardians.*—When the bond is granted in favour of trustees or guardians, or others acting for third parties, the following

or a similar clause may be inserted after the personal obligation and before the disposition in security:—

PROVIDING ALWAYS and DECLARING that neither I (*i.e., the borrower*), nor my foresaids, nor assignees, nor others deriving right from the said trustees (*or as the case may be*), to the sums of money hereby due, shall be anywise concerned with the application of the sums of money to be paid or advanced by us or them to the said trustees; but we or they shall be fully exonerated and secured by the receipts, discharges, assignations, or other writings to be granted by the said trustees or their foresaids.

*Bond to Curator Bonis, &c.*—When money is lent on heritable security by a *curator bonis*, or others acting for minors or incapacitated persons, the obligation to repay and the conveyance in security will be, not to the curator and his successors in office, but to the said B (*i.e., the ward*), “his executors” (*or “heirs excluding executors”*), “or assignees whomsoever,” *as the case may be*. Bonds in favour of a pupil or a factor *loco tutoris* for a pupil will be in similar terms. Such bonds though taken to the ward ought to contain the following clause:—

PROVIDING and DECLARING that the discharge or assignation of the said K (*the guardian*), or of his successors in office, shall be sufficient to discharge or assign this Bond and Disposition in Security, and the sums of money thereby due and the security thereby created, without the consent or concurrence of the said B (*the ward*).

In order to obviate all questions as to the right of succession such a clause as the following may be introduced:—

BUT WHEREAS the foresaid sum of                      pounds has been lent out and invested by the said K, as *curator bonis* foresaid of the said B, in conformity with (*if the case be so*) the following interlocutor of the Lords of Council and Session (*here quote*): THEREFORE it is hereby PROVIDED and DECLARED that the investment of the foresaid sum of                      pounds on heritable security, now made in conformity with the order of the Court of Session as aforesaid, shall not prejudice or affect the rights of the parties who would have been entitled to the said sum on the death of the said B if this investment had not been made: BUT reserving always to all parties concerned all pleas and claims affecting the right to the said sum which may hereafter arise in the event of the present investment being at any future time validly consented to or adopted by the said B.

*Interest.*—The rate of interest to be specified in the bond will be matter of agreement. It is common to specify five per cent. in the bond<sup>(a)</sup> and to modify this rate by back-letter (of which examples are given on pp. 252 *et seq.*), and it is recommended that this course should be followed. The reason of this is, that if a low rate is specified in the bond, no higher rate could be recovered by diligence, however much the market rate may rise; and in the event of the debtor making default in payment, either of principal or interest, it is reasonable that the creditor should have the power of exacting what is known as the "legal rate."

*Collateral Obligation for Payment of Interest.*—If desired, such an obligation may be granted separately as on p. 248, *infra*, or introduced in the bond thus :—

AND I, the said A, and I, C (*designation*), do hereby BIND ourselves, jointly and severally, and our respective heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to pay to the said B or his foresaids the interest, &c.

And the clause of registration will proceed :—

AND we, the said A and C, consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

In order to obviate any question with the co-obligant in the event of the principal debtor's obligation or the heritable security itself proving defective, the following clause may be introduced immediately before the registration clause :—

AND I, the said C, hereby declare that the personal obligation on me and my foresaids hereinbefore written shall subsist and be effectual against me and my foresaids, notwithstanding any defect or nullity in the personal obligation on the said A and his foresaids hereinbefore written, or in the security hereby constituted or intended to be constituted over the lands and others before disposed, the said B and his foresaids being nowise responsible for the sufficiency or validity of the said personal obligation on the said A or his foresaids, or of the said security.

*The Subjects Disposed.*—The difference in form between the Bond and Disposition in Security over property held burgage, and that applicable to ordinary feudal subjects, is taken away by section 25 of "The Con-

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<sup>(a)</sup> Where no rate is stated no security for interest is constituted (*Forbes v. Walsh & Forbes*, 21 R. 630).

“veyancing (Scotland) Act, 1874,” but writs affecting lands which immediately prior to the commencement of that Act (1st October, 1874) were held burgage, must still be recorded in the Burgh Register of Sasines.

*Bonds with Pari Passu Ranking.*—When several Bonds and Dispositions in Security are granted over the same lands constituting securities with *pari passu* preference, the following clause should be inserted in each before the clause of assignation of rents :—

PROVIDING ALWAYS and DECLARING that the foresaid sum of  
    pounds hereby secured, together with the further sums  
 of     pounds and     pounds borrowed and secured,  
 or about to be borrowed and secured, by me, conform to Bonds and  
 Dispositions in Security by me in favour of     and  
    respectively, over the lands and others before  
 disposed, with the interest thereof and penalties corresponding  
 thereto, if incurred, shall be ranked and preferred *pari passu* on the  
 said lands and others, and the rents and duties thereof, and also on  
 the prices and proceeds to arise therefrom in case of a sale of the  
 same or of any part or portion thereof, and that without regard to  
 the order of priority in which these presents and the said Bonds  
 and Dispositions in Security granted or to be granted by me in favour  
 of the said     and     respectively have been  
 or shall be placed on record.

If the arrangements as to further loans are not completed at the time of granting a Bond and Disposition in Security, a *pari passu* preference may be reserved for future loans by the following clause :—

PROVIDING ALWAYS and DECLARING that the foresaid sum of  
    pounds hereby secured, together with any further sum  
 or sums of money, not exceeding in whole the sum of     pounds  
 of principal (making with the principal sum hereby secured a total sum  
 of     pounds of principal), borrowed and secured, or which may  
 yet be borrowed and secured, by me over the lands and others before  
 disposed, together with the interest of the said sum of     pounds,  
 and of the said further sum or sums, and penalties corresponding  
 thereto, if incurred, shall be ranked and preferred *pari passu* on the  
 said lands and others, and rents and duties thereof, and also on the  
 prices and proceeds to arise therefrom in case of a sale of the same  
 or any part or portion thereof, and that although these presents shall  
 be placed on record before the Bond and Disposition in Security, or

Bonds and Dispositions in Security, for the said further sum or sums of money.

A *pari passu* preference may also be simply and effectually constituted by granting a bond for the whole sum to be borrowed in favour of one person, who will then grant to each lender an assignation of the bond to the extent of his loan.

If superiorities form the subject of security, state the ranking and preference as—

“On the said subjects and others, and the rents and duties, and “also the feu-duties and casualties of superiority, thereof.”

The consent of the creditor in securities affecting superiorities is required before the casualties can be redeemed.—Conveyancing Act, 1874, s. 16.

*Postponement of (or ranking pari passu with) Existing Bonds.*—In the event of its being arranged that an existing bond shall be postponed to (or ranked *pari passu* with) a new bond, the clause of disposition in security will run as follows:—

AND IN SECURITY of the personal obligation before written, I, the said A, heritable proprietor of the subjects after mentioned, with the special advice and consent of C (*name and designation of prior creditor*), and I, the said C, but only for the purpose and to the effect of postponing to (*or ranking and placing pari passu with, as may be desired*) the right and security hereby granted, the right and security which I have in and over the lands and others after disposed by virtue of a Bond and Disposition in Security over the same for the sum of                      pounds of principal, with the interest thereof and penalties corresponding thereto, dated                      and recorded                      , granted by the said A in my favour; and we, the said A and C, for our respective rights and interests, with one advice and consent, DO hereby DISPONE, &c. (*in usual form*); AND THAT IN REAL SECURITY to the said B and his foresaids of the whole sums of money above written—principal, interest, and penalties.

The assignation to rents and writs, clause of warrandice, and power of sale, will be granted with consent of the prior creditor, and immediately before the clause of registration there will be inserted a clause in the following terms, or to the like effect:—

AND I, the said C, hereby CONSENT, AGREE, and DECLARE that the right and security hereby granted to the said B in and over the lands and others before described, and rents thereof, and prices arising therefrom in case of a sale of the same in virtue hereof, shall be ranked preferably to (*or, if this be desired, pari passu* with) the right and security in and over the same held by me in virtue of the Bond and Disposition in Security granted by the said A in my favour as aforesaid, in like manner as if (*where the prior security is postponed*) these presents had been placed on record prior to the date of recording the said Bond and Disposition in Security by said A in my favour.

(*Where a pari passu preference is to be given*)—As if the sums contained in and due by the said Bond and Disposition in Security in favour of me, the said C, and the sums hereby due, had been one sum, and had been contained in and due by one and the same Bond and Disposition in Security.

Then will follow in either case :—

BUT RESERVING ALWAYS to me, the said C, the said Bond and Disposition in Security in my favour, and the right and security thereby created, and whole effect thereof in all respects, except that the same shall be postponed to (*or ranked pari passu* with, *as may be proper*) these presents, and the right and security hereby created over the said lands and others.

*Clause of Insurance.*—It is enacted by section 119 of the Consolidation Act of 1868, that the statutory clause of assignation to rents shall, *inter alia*, import a power to the creditor and his representatives or heirs (*as the case may be*), and assignees, to insure all buildings against loss by fire, but it is competent to make special provision for this, in which case such a clause as the following may be introduced immediately before the assignation of rents :—

AND FURTHER, I BIND and OBLIGE myself and my foresaids, so long as the said principal sum or any part thereof shall remain unpaid, to make payment of the yearly premium requisite for keeping up an insurance of the subjects hereinbefore disposed against loss by fire, to the extent of                      pounds at least, with the Insurance Company, or such other company as the said B (*the creditor*) and his foresaids shall think proper, the said insurance to be effected by the said B in name of himself and his foresaids *primo loco*, and of

me, the said A (*the borrower*), in reversion, and to exhibit to the said B and his foresaids, or to his or their factor or agent for the time, receipts for such payments regularly within eight days after the same shall fall due in each year; and in case the said B or his foresaids shall at any time advance and pay the said premium, which they are hereby authorised but nowise bound to do, I BIND myself and my foresaids to repay on demand the sums so advanced by them, with interest thereon at the rate of five per cent. per annum during the not-payment, and all relative charges and expenses, as the same shall be instructed by a statement under the hands of the said B or his foresaids, or his or their factor or agent, without the necessity of any further voucher.

Or—

If it be thought proper to take heritable security for payment of the insurance, the following obligation may be introduced immediately before the disposition in security :—

AND FURTHER, as the said B has effected, or is about to effect, an insurance of the houses and other erections on the lands and others after disposed, in his own name (*or as may be desired*), against loss by fire, to the extent of                      pounds, I hereby BIND myself and my foresaids, so long as the foresaid sum of                      pounds hereby due, or any part or portion thereof, shall remain unpaid, to pay to the said B or his foresaids at the term of                      yearly the sum of                      pounds, for enabling him or them to pay the premium on said insurance, and all relative charges and expenses, with a fifth part more of the said yearly sum of penalty in case of failure, and the interest of the same, at the rate of five per cent. per annum, from and after each term of payment during the not-payment: PROVIDING ALWAYS and DECLARING that the said B and his foresaids shall be bound to hold just count and reckoning with me or my foresaids in reference to the said yearly sum of                      pounds, and to repay to me or them any balance of the same that shall in any year remain in his or their hands after satisfying and paying the premium on said insurance, and all relative charges and expenses, as the same shall be instructed by a statement under the hand of the said B or his foresaids, without the necessity of any further voucher.

Should this last form be adopted, the clause of disposition in security will run thus:—

AND IN SECURITY of the several personal obligations before written, I DISPONE, &c.

*Reservation of Power to Feu.*—It is convenient when a security is granted over lands which are eligible for feuing purposes, that power should be as in the absence of such a power considerable expense may be incurred in reserved to grant charters and other feu-rights without consent of the creditor, procuring deeds of restriction, or in obtaining the consent of creditors to each feu-right. The power will, of course, be qualified in such way as to prevent the security being diminished in value by its exercise, and this is usually effected by specifying the minimum rate of the feu-duty to be taken. The clause containing this reservation is occasionally framed so as to include not only power to feu, but also power to sell or dispoise by contract of ground-annual. We do not, however, recommend this enlargement of the power to dispose of the subjects of the security. It is clear on the ordinary principles of feudal conveyancing, that the security of the creditor who consents by anticipation to the granting of feu-rights extends over the superiorities of the feus thus created, the rights conferred on the vassals being recognised as properly mere burdens on the radical rights of the superior; but it is not so clear that the ground-annual, which by the ordinary form of contract is made a real burden on the lands disposed, is, as such, a portion of the estate covered by the creditor's security. Where, therefore, the conveyancer agrees to alienation by contract of ground-annual, it will be proper, by way of precaution, to insert a stipulation that this power shall be validly exercised only by contracts to which the creditor is a party, or in which the ground-annual is made a real burden upon the lands in favour of and payable to the creditor so long as his security exists; and a declaration that all contracts in which such stipulation is not observed shall be absolutely void and null. The following is a form of clause reserving power to feu. It is usually inserted immediately before the clause of assignation of rents:—

DECLARING ALWAYS, that notwithstanding the conveyance in security hereinbefore contained, it shall be competent to me, the said A, and my said foresaids, proprietors of the lands and others before conveyed in security, without the consent of the said B or his foresaids, to dispoise in feu-farm, to be holden of and under me and my foresaids, any parts and portions of the said lands and others (*or* such parts and portions of the said lands and others as still remain unfeu'd), and that in such manner and on such conditions as I and my foresaids may deem most expedient, but always so that no grassum, price, or consideration shall be taken or be stipulated to be taken therefor, other than an annual feu-duty, with or without periodical duplications or other additions thereto; and which annual

feu-duty shall in no case be less in amount than at the rate of £ sterling for each imperial acre (or at the rate of per annum for each square yard, or otherwise, as may be desired): AND PROVIDING that it shall be a condition of the feu-rights so to be granted, that the buildings to be erected and maintained on the ground so feued shall be of the annual value of at least double the amount of the stipulated feu-duty: AND ALSO PROVIDING that it shall not be in the power of me or of my foresaids to make or consent to any conditions or stipulations whereby any right competent by law to us as superiors of any part of said lands and others to be feued as aforesaid, for security or recovery of the said feu-duties and periodical duplications or other additional payments, may be in any way prejudiced: AND DECLARING FURTHER that the superiority of the lands to be so feued as aforesaid, and the feu-duties and other prestations thereof, and any other right, title, or interest in or to the same which may belong to and be reserved by me and my foresaids as superiors thereof, shall be subject and liable to the real security hereby created, and to the payment of the sums of money herein contained, in the same way and manner as the *dominium utile* or right of property of the same while unfeued; and that the real security hereby created shall extend over the superiority and feu-duties and others payable therefor, and the ground to be so feued in security thereof, and any other right or interest in or to the same which may be reserved to me and my foresaids as superiors foresaid allennarly, in the same manner and as fully in all respects as if the same had been hereby specially conveyed to the said B and his foresaids after such feu-rights had been constituted.

Where it is contemplated that any of the feu-duties payable for portions of the lands to be feued shall be made redeemable, the creditor's interest may be protected by the following addition to the above clause:—

DECLARING FURTHER that in the event of any of the said feu-duties and periodical duplications or other additional payments being made redeemable, the deeds necessary for redemption thereof shall be executed only with consent of the said B or his foresaids under pain of nullity, and the redemption money shall, if desired by them, be applied at his or their sight in payment *pro tanto* of the sums herein contained.

*Assignment of Rents.*—Where the subjects disposed include or consist of superiorities, this clause should run:—

AND I assign the rents, and also the feu-duties and casualties ;

And feu-rights should also be excepted from the warrandice.

*Clause of Assignment to Writs* where no writs are delivered. This clause will run :—

AND I assign the writs, but in respect these are not delivered up herewith, I BIND and OBLIGE myself and my foresaids to make the same, so far as in my or their possession, or under our control, furthcoming to the said B and his foresaids when required, upon a receipt and obligation for redelivery thereof within a reasonable time and under a suitable penalty.

Where the right to have production of writs is contained in another deed, and it is likewise assigned by the granter of the bond, add :—

AND I assign to the said B and his foresaids all obligations contained in the prior titles of the subjects to make the writs therein referred to furthcoming to disponees as therein mentioned.

We now give the form of a separate collateral obligation for payment of the interest on a debt contained in a Bond and Disposition in Security :—

##### 5. Collateral Obligation for Payment of Interest on a Debt contained in a Bond and Disposition in Security.

I, C (*designation*), CONSIDERING that A (*designation*), by his Bond and Disposition in Security, dated                      and recorded                      , for the causes therein specified, bound himself, and his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to B (*designation*), his executors (*or* his heirs excluding executors) or assignees, the sum of £                      sterling, at the term of                      then next, with a fifth part more of liquidate penalty in case of failure, and the interest of said principal sum at the rate of five per cent. per annum from the date of said Bond and Disposition in Security during the non-payment, as set forth in said Bond and Disposition in Security: AND IN SECURITY of said personal obligation the said A thereby disposed to and in favour of the said B and his foresaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of

a sale by virtue thereof, ALL AND WHOLE the lands of (*insert the name of the lands conveyed*) and others therein particularly described, all as the said Bond and Disposition in Security in itself more fully bears: AND FURTHER CONSIDERING [that in the treaty for the said loan it was stipulated and agreed that I should become bound, as after written, for the payment of the interest of the said principal sum (*or as the case may be*)]: THEREFORE I, the said C, do hereby, without prejudice to the said Bond and Disposition in Security, but in corroboration thereof, BIND and OBLIGE myself, my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, and renouncing, as I hereby renounce, the benefit of discussion of the said A or his foresaids, to pay to the said B, his executors (*or his heirs excluding executors*) or assignees, the interest of the said principal sum of £ , at the rate of per centum per annum, during the not-payment of the said principal sum, and that at the two terms in the year, and , by equal portions, beginning the first term's payment thereof at the term of next, for the interest which shall be due from the date of the said Bond and Disposition in Security to the said term, and the next term's payment of the said interest at the term of thereafter, and so forth half-yearly, termly, and proportionally thereafter during the not-payment of the said principal sum, with a fifth part more of the interest due at each term of liquidate penalty in case of failure in the punctual payment thereof: AND I DECLARE, &c. (*as in the clause recommended for adoption, p. 241, in the case of a collateral obligation for interest embodied in the bond and disposition in security, mutatis mutandis*): AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

**6. Supplementary Bond to supply the place of an obligation contained in a Deed which has been lost.**

I, A, considering that by Bond and Disposition in Security (*or as the case may be*) granted by me (*or if A be the representative of the granter, by C*) in favour of B, dated , I (*or the said C*) bound myself (*or himself*) to pay to the said B (*narrate the original so far as the case admits*): AND WHEREAS the principal Bond and Disposition in Security (*or as the case may be*) before mentioned has been lost or mislaid, or

at least the same cannot at present be found, and I am desirous of supplying the loss thereof in case the same shall not be found, in so far as the same relates to the obligation thereby granted by me for payment of the foresaid sum of            pounds to the said B (*creditor's name, or as the case may be*): THEREFORE, without hurt or prejudice to the said Bond and Disposition in Security (*or as the case may be*) in any respect, but in corroboration and supplement thereof in so far as the same relates to the said obligation by me, and subject always to the provisions and declarations after written, I do hereby BIND myself, and my heirs, executors, and representatives whomsoever, without the benefit of discussing them in their order, TO PAY, &c. (*here will follow an obligation for payment, or as the case may be, as in the deed which has been lost, or as near thereto as possible*): BUT it is hereby expressly PROVIDED and DECLARED that these presents shall nowise constitute or infer any obligation upon me for payment of the said sum of            pounds, or any part thereof, in addition to the obligation for payment contained in the said Bond and Disposition in Security (*or as the case may be*), and that only once and single payment of the said sum of            pounds shall be exigible from me and my foresaids, whether under the obligations contained in the said Bond and Disposition in Security (*or as the case may be*) or under these presents, and that such once and single payment of the said sum of            pounds, with the interest thereon and penalties if incurred, shall effectually discharge not only the obligation contained in the said Bond and Disposition in Security (*or as the case may be*), but also the obligation before written, and real security hereinafter granted: AND IN SECURITY of the personal obligation before written, but with and under the provisions and declarations before expressed, I DISPONE, &c. (*in usual form*).

#### 7. Deed of Postponement of Heritable Security.

I, A (*designation*), CONSIDERING that D (*designation*), by Bond and Disposition in Security dated            , and recorded            , for the causes and considerations therein set forth, bound himself, and his heirs, executors and representatives whomsoever, without the necessity of discussing them in their order to repay to me, the said A, or my heirs, and assignees whomsoever, the sum of £            at the term of            ,

with interest and penalties as therein mentioned; and in security of said obligation disposed to and in favour of me and my foresaids, heritably, but redeemably as therein set forth, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*description of subjects*), with all right, title, and interest whatsoever which he, the said D, his predecessors or authors, had or might anywise claim or pretend to the said lands and estate or any part thereof, but that only under the conditions, provisions, and declarations therein set forth, as the said Bond and Disposition in Security containing power of sale and other usual and necessary clauses in itself more fully bears: FURTHER, CONSIDERING that the said D has borrowed the further sum of £ , and in security thereof has granted, or is about to grant, in favour of H (*designation*), the lender, a Bond and Disposition in Security over said lands and estate, and has requested me to postpone the right and security held by me over the same in virtue of the foresaid Bond and Disposition in Security in my favour to the right and security granted or to be granted in favour of the said H, which I have agreed to do: THEREFORE I do hereby postpone the foresaid Bond and Disposition in Security for £ in my favour affecting the said lands and estate, to the said Bond and Disposition in security for £ , granted or about to be granted in favour of the said H, his executors and assignees whomsoever; and I DECLARE that my said security shall no way compete with the Bond and Disposition in Security in favour of the said H and his foresaids, which shall have as full and complete preference as if it had been first recorded in the appropriate Register of Sasines; PROVIDED ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that these presents shall in no respect injure or affect said Bond and Disposition in Security in my favour to any other or further extent or effect than above expressed, but that in all other respects the same shall remain in as full force, strength and effect as if these presents had never been executed: AND I oblige myself, my heirs, executors, and successors, to warrant these presents at all hands and against all mortals: AND I consent to the registration hereof for preservation, as well as for publication, in the Register of Sasines.—IN WITNESS WHEREOF, &c.

## SECTION II

## BACK-LETTERS

The back-letter is a writing addressed by the creditor or his agent to the borrower or his agent, containing certain stipulations affecting the terms of the bond. The back-letter most commonly relates to the endurance of the loan and the rate of interest to be paid.

**1. Back-Letter fixing Duration of Loan and rate of Interest Payable.(a)**

*(Address of creditor and date.)*

To A *(designation and address of borrower).*

Sir,—With reference to the Bond and Disposition in Security for £            sterling over *(here specify subjects)*, dated           , and granted by you in my favour *(or as the case may be)*, it is understood and agreed to on both sides, that notwithstanding what is therein provided, the loan shall subsist for the space of            years [*or until the term of            (insert term and year of expiry, or state years of duration of loan, as may be desired)*] provided that the interest thereon is regularly paid to me at the terms mentioned in said Bond and Disposition in Security, and that no circumstance occurs prejudicial to the personal obligation or the security subjects: AND it is further understood and agreed that if regularly paid as aforesaid, said interest shall be at the rate of            per cent. for the period of            years from this date [*and if so arranged, add—and thereafter at the market rate on first landed securities, as may from time to time be fixed by the Commissioners appointed in Edinburgh for that purpose (or as the case may be)*].

I am, Sir,

Your most obedient Servant,

(Signed)    B.

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(a) The letter should be holograph, or adopted as holograph, or tested in ordinary form, and executed in duplicate, a copy being held by each party to the transaction.

The same back-letter, if granted between agents, will run thus :—

*(Address of creditor's agent, and date.)*

To A *(full name and designation of borrower's agent)*.

Sir,—With reference to the Bond and Disposition in Security for            pounds sterling, over *(specify subjects)*, dated            , and granted by your client C *(insert borrower's name and designation as in bond)* in favour of my client E *(insert creditor's name and designation as in bond)*, it is understood and agreed to on both sides, that notwithstanding what is therein provided, the loan shall subsist for the space of            years [*or until the term of (insert term as may be desired)*] provided that the interest thereon be regularly paid to my said client at the terms mentioned in said Bond and Disposition in Security, and that no circumstance occurs prejudicial to the personal obligation or the security subjects: AND it is further understood and agreed *(insert stipulation respecting interest, and conclude as before)*.

In all cases where it is practicable, the back-letter as well as the security writ should be granted by the principal.

Back-letters are necessarily used when a portion of the principal sum is retained by the creditor until a certain event takes place, or when the principal sum is paid by instalments. Such back-letters being arrangements of merely a temporary nature, may with more propriety be granted between agents. They are commonly used in connection with loans granted over buildings in course of erection or not quite finished, and where the creditor retains a portion of the principal sum, until the buildings are completed. The following style will illustrate some of these cases :—

## 2. Back-Letter between Agents when a portion of the Principal Sum is retained.

*(Address of creditor's agent, and date.)*

To E, W.S., Edinburgh,

Agent for A *(designation)*.

Sir,—With reference to the Bond and Disposition in Security for            pounds sterling over *(specify subjects)*, dated            , granted by A *(insert borrower's name and designation)* in favour of B *(insert creditor's name and designation)*, it is hereby DECLARED that at

the date of granting said Bond and Disposition in Security the said A received only the sum of                      pounds, instead of the whole sum of                      pounds therein specified, (*L*) the balance, amounting to                      pounds sterling, being meantime retained by the said B until the whole buildings presently in course of erection on the piece of ground contained in said Bond and Disposition in Security shall have been completely finished in a proper and tradesmanlike manner and to the satisfaction of (*here name and design a valuator to be agreed upon by the parties*), as vouched by his written certificate to that effect; upon which event, and production of which certificate, the said balance shall, under deduction of the whole expenses of this loan and of the foresaid inspection and report, be handed over by the said B to the said A: AND FURTHER, it is agreed and declared that the said A, until he receives payment of the said balance retained as aforesaid, shall pay interest only on the said sum of                      pounds sterling already advanced, and that at the rate of                      pounds per centum per annum.

I am, Sir,

Your obedient Servant,

C D, *W.S.*

(*Agent for B (the lender).*)

Another common arrangement as to interest is for the creditor to charge the borrower with interest as arranged on the full sum specified in the bond, and to allow deduction therefrom of bank interest upon the sum retained by the creditor. Such an arrangement may be expressed in the above back-letter by substituting the following for the latter portion thereof:—

AND FURTHER, it is AGREED and DECLARED that until the said sum of                      pounds sterling retained by the said B has been paid, the said A shall be entitled to deduct bank interest thereon, as allowed on daily balances, (*a*) from the interest payable to the said B on the sum of (*specify sum in bond*) pounds sterling, in terms of the said Bond and Disposition in Security.

Otherwise the balance of the loan may be paid by instalments, which may be lodged on deposit-receipt instead of being left in the lender's hands. In this case the back-letter runs as follows:—

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(*a*) Or "deposit-receipt," as may be arranged.

(*Take in form to (L), and then proceed*)—AND that the balance of said sum, amounting to                      pounds sterling, is to be consigned on deposit-receipt (*or otherwise, as may be arranged*) with the                      Bank of Scotland for the sums after mentioned, in the joint names of yourself and me, which deposit-receipts shall remain in my hands, and the sums in which shall be payable to the said A at the following times and in the following portions, viz.,                      pounds when the plaster is finished and the floors are laid, and                      pounds when the house is entirely finished and ready for occupation (*or otherwise, as may be arranged*), the said A previous to payment of either of the said instalments producing at his own expense a certificate by (*name and designation of valuator*) that the work on performance of which the same is to be paid has been satisfactorily executed; and when either of the said payments falls to be made, the sum in the deposit-receipt for the amount of such payment shall be uplifted and paid over to the said A, who shall be entitled to the interest accrued thereon, in respect that he is to pay interest on the whole sum contained in the said Bond and Disposition in Security from the date thereof.

In "Building Loans," where the principal sum is paid by instalments as the buildings in course of erection, which form the security for the loan, gradually progress, the following style is frequently adopted :—

### 3. Back-Letter when Principal Sum is payable by Instalments.

(*Address of creditor's agent, and date.*)

To E, W.S., Edinburgh,

Agent for A (*designation*).

(*Take in form to (L) as before, and then continue*)—AND that the balance of said sum, amounting to £                      sterling, meantime retained as aforesaid, shall, under deduction of the whole expenses of this loan, including valuations and certificates, and any other expenses relative or incidental thereto, or to payment of the instalments after-mentioned, as arranged between our respective clients (*or as the case may be*), be payable by the said B to the said A

in the following instalments and at the following times, viz.,  
pounds sterling on the roof of the buildings at present in course of  
erection on the ground conveyed by the said Bond and Disposition in  
Security being finished in a proper and tradesmanlike manner to the  
satisfaction of P (*name and designation of valuator chosen by the  
parties*), as vouched by his certificate in writing to that effect ;

pounds sterling on the erection of the said buildings having  
advanced so far as in the opinion of the said P, as vouched by his  
written certificate, to be of the value of at least pounds ster-  
ling ; and the final balance of pounds sterling on the said  
buildings and surrounding grounds, walls, drains, railings, &c., being  
completely finished to the satisfaction of the said P, as vouched by  
his certificate in writing to that effect : AND FURTHER, it is AGREED  
and DECLARED that until the said A shall receive payment (under the  
deductions foresaid) of the foresaid balance of £ sterling  
meantime retained, he shall pay interest only on the said sum of  
pounds sterling of which he has already received payment,  
and on such further sum or sums as he may receive by way of instal-  
ment as before-mentioned, and that at the rate of pounds  
per centum per annum, such interest in the case of instalments  
commencing only from the dates on which the same shall have been  
paid.

I am, Sir,

Your obedient Servant,

C, W.S. (*agent for B*).

Another common period of instalments is—

pounds sterling when the joists are laid ; pounds  
sterling when the chimney heads are levelled ; pounds  
sterling when the roof is on and the slater-work and plumber-work  
of the roof are completed ; pounds sterling when the plaster-  
work is completed ; and the balance when the whole buildings,  
furnishings, and others are finished, and the drainage and other  
outside operations are completed, each of said instalments being  
payable only on the written certificate of the valuator.

It should be remarked, with reference to all such arrangements as  
those embodied in the two last examples of back-letter, that the security  
for all advances made subsequent to the registration of the Bond and

Disposition in Security is, to say the least, very doubtful. Where such arrangements are contemplated by the parties they should be carried out by means of a cash-credit bond.

Another form of security adopted for prospective advances or for loans of uncertain amount is that of an absolute disposition with or without a personal bond by the borrower, and relative back-letter or back-bond by the creditor qualifying the disposition by specifying the terms on which he is to hold the property disposed to him, and the conditions on the fulfilment of which it will be re-conveyed.

The limit of the advances to be covered by such a security will of course be determined by the terms of the back-letter, but where these are general, as "for all sums advanced or to be advanced," the security will cover any sum, whether advanced before or after the date of the disposition or other title. The registration of the back-letter, however, will restrict the security to the sums actually lent or advanced as at the date of such registration. See "Bell's Lectures," 2nd ed., vol. ii. p. 1164.

The disposition, where this form of security is adopted, will be in the ordinary terms, proceeding on a narrative of "certain onerous causes and considerations; and the following is a form of back-letter which can be readily adapted to varying circumstances:—

#### 4. Back-Letter *qualifying a Disposition ex facie Absolute.*

To A (*full name and designation of debtor*).

I, B (*full name and designation of the creditor*), CONSIDERING that by disposition, dated the                      day of                      , and recorded in the Division of the General Register of Sasines applicable to the County of M the                      day of                      , 19                      , granted by you in my favour, you did, for certain onerous causes and considerations, dispose to me and my heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here describe or validly refer to the subjects conveyed*): AND CONSIDERING that although the said disposition was in its terms *ex facie* absolute, yet the same was truly granted in my favour as a security for advances made, or to be made, by me to you (*or in security of an advance of £                      made by me to you, or otherwise, as the case may be*), with interest thereof and penalties if incurred, relative expenses and others, as after mentioned; and that it is proper I should grant these presents in manner under written; THEREFORE I DO hereby ACKNOWLEDGE and DECLARE—(*First*) That the said disposition was granted in my favour, and the subjects before described (*or referred to*) and thereby conveyed are to be held

by me in security always, and for repayment of advances made or to be made by me to you [not exceeding in whole the sum of £        ] with the interest thereof at the rate of        per cent. per annum from and after the respective dates of advance, as instructed by the receipts or other acknowledgments to be granted by you, or in other habile mode, until complete repayment, and likewise of all expenses incurred or to be incurred by me with reference to said disposition and these presents, or otherwise in connection with the said transaction, and of the expenses incurred or to be incurred by me in the execution of improvements and repairs on the said subjects, or in proceedings against any of the tenants or occupants thereof, and for all sums advanced or to be advanced in payment of feu-duties, taxes, and public burdens, or insurance against fire, or otherwise, in any manner of way in connection with the said subjects, or with my entry to and effectual maintenance of the possession thereof, as after provided for, including a sufficient remuneration to me or any factor or agent whom I may employ, with interest at the rate foresaid from the respective dates of payment till complete repayment thereof to me be made. (*Second*) On repayment to me of the whole of the foresaid advances, or other outlay, and interest thereof, I shall be bound to reconvey the foresaid subjects to you and your heirs and assignees, at your or their expense, and with warrandice from my fact and deed only. (*Third*) In the event of the whole foresaid advances or outlay not being repaid to me by you, with interest and others as aforesaid, within six days after a demand of payment made by me or my representatives by registered letter posted and addressed to you at your last known place of residence, then I or my representatives shall be entitled, without further notice to you or your representatives, either (1) to enter into possession of the said subjects and draw the rents thereof, and apply the same in or towards payment of all feu-duties, taxes, and public burdens exigible therefrom, and of the expenses of improvements and repairs thereon, and the expenses of the said transaction, and in or towards payment at the rate foresaid of the interest on the said advances, and thereafter of the said advances themselves, to be instructed as aforesaid; or (2) to sell the said subjects either by public roup or private bargain, in whole or in lots, and at such price or prices as I or my representatives may think proper, and to apply the price or prices to be realised from such sale or sales in repayment of the

foresaid advances, and of all other outlay incurred by me or my foresaids in the premises and interest thereof as aforesaid, as the amount shall be ascertained by a stated account under my or their hand without further vouchers: DECLARING that should there be any surplus remaining in my or their hands after such application of the foresaid price or prices, the same shall be paid over to you or your representatives, in exchange for and on delivery of a discharge of all my or my foresaids' actings and intromissions in the premises, and until such discharge shall be obtained shall be consigned in the

Bank, or other chartered or incorporated bank in Scotland, in my or their name, for behoof of yourself or your representatives, as the case may be.—IN WITNESS WHEREOF, &c.

A security by absolute disposition has obvious risks to the borrower in the event of the insolvency or bankruptcy of the creditor, unless a back-letter in unequivocal terms is taken and recorded; but on the other hand, the recording of the back-letter in the Register of Sasines would defeat the intention of the creditor in taking this form of security, and to prevent recording, the creditor sometimes insists on retaining the principal letter, giving the debtor a certified copy.

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### SECTION III

#### CASH-CREDIT BONDS

By 33 Geo. III. c. 74. s. 12, and afterwards by 54 Geo. III. c. 137, s. 14, re-enacted by 19 & 20 Vict. c. 91, s. 7, it was declared lawful to pledge lands, &c., in security of cash accounts or credits, "provided always that the principal and interest which may become due upon the said cash accounts or credits shall be limited to a certain definite sum, to be specified in the security, the said definite sum not exceeding the amount of the principal sum and three years' interest thereon at the rate of five per centum." The following is a Style of a Cash-Credit Bond which is most commonly granted in favour of a bank, but may be in favour of a private individual lender.

#### 1. Bond for Cash Credit with a Bank granted by Individual *Co-obligants, with Heritable Security.*

WE (*names and designations*), CONSIDERING that THE  
BANK have agreed to allow us credit upon a cash account, to be kept

in the books of the said bank, in name of me, the said , to the amount of the principal sum of £ , upon our granting these presents: THEREFORE we do hereby BIND and OBLIGE ourselves, as full debtors and co-obligants, all conjunctly and severally, and our respective heirs, executors, and successors whomsoever, renouncing the benefit of discussing them in their order, to content and pay to the said bank, or their assignees, on demand, at any time after two months from the date or last date hereof, and that within the head office in of the said bank, or within the office or branch where said cash account may be kept for the time, the foresaid principal sum, or such part or parts thereof as shall at any time be advanced or due upon the said cash account; together with interest at the rate which may from time to time be fixed by the said bank as chargeable on cash accounts, and that from the time or times of advance respectively, until the same shall be repaid, with a fifth part more of the said principal sum of penalty in case of failure, and so proportionally: DECLARING that the sums to be placed to the debit of the said cash account shall embrace not only all sums of money which I, the said , or any person or persons having my authority, shall value for or draw out, by orders or drafts on the said bank, or on any of their officers, but also all other debts or liabilities incurred, or which shall be incurred, by me to the said bank, in respect of notes or bills discounted or held by the said bank, or any of their officers on their behalf, or of letters of credit, guarantees, overdrafts on current accounts, or other obligations, for which I am responsible to the bank, or in any other manner of way whatsoever; the amount of all which debts and liabilities the said bank shall be entitled, at any time, to place to the debit of the said cash account, and that without prejudice to any other securities held by them therefor, and without intimation to any of us, the parties hereto; but the sums so to be charged or debited, exclusive of interest, shall not exceed in all the foresaid principal sum: DECLARING that it shall be competent to, and in the power of, the said bank, if they see fit, to accumulate the said interest, with the principal sums due on the said account, at the annual balance of the books of the said bank, on whatever date that may be, or at such other date annually as may be found most convenient for the bank; and that a docquet of acknowledgment in the bank's books, or any separate acknowledgment, signed by me, the said , or by any person or persons having

my authority as aforesaid, shall be conclusive as against us, the whole parties hereto, in fixing the amount or balance due at the date therein stated, upon the said cash account; and the said bank are hereby authorised, upon the granting of any such acknowledgment, to deliver up the whole cheques and other vouchers of the sums charged in the said cash account: AND IT IS HEREBY DECLARED that a stated account, made out from the books of the said bank, commencing at the date of the last acknowledged balance, if any, and signed by the general manager, cashier, secretary, or accountant of the said bank at \_\_\_\_\_, or by the manager, agent, or accountant at the office or branch where said cash account may be kept for the time, shall be sufficient to constitute and ascertain a balance and charge against us, the parties hereto, and our foresaids; and no suspension shall pass of a charge so constituted and ascertained but upon consignment only: AND IT IS HEREBY DECLARED that nothing herein contained shall prejudice or affect any other securities which the said bank already hold, or may hereafter hold, over stock in the said bank, or over any other stock or property belonging to any of us, it being always in the power of the said bank to allow all or any part of such securities, or the stock or property to which they relate, to be disposed of, sold, or abandoned, without applying the same, or the proceeds thereof, towards payment of any debt to be hereby contracted; and the obligations hereby undertaken by us, shall remain in full force in the same manner, and to the same extent, as if no such securities had ever existed: AND IT IS HEREBY DECLARED that it shall be in the power of the said bank, at their own discretion, and without consulting us, the parties hereto, to transact or compromise with, or give time to any parties, obligants on the said notes, bills, or other obligations, and also generally to transact with me, the said \_\_\_\_\_, in the same manner as if I were the only party bound or liable under these presents, without thereby impairing or affecting the liability of any of us, the other parties hereto: AND IT IS HEREBY FURTHER PROVIDED AND DECLARED, that however often the said principal sum may be drawn out and replaced, or although the account from time to time should be overdrawn, or should appear with a sum at its credit, these presents shall remain in full force, the same being intended as a continuing security until specially recalled in writing, and duly discharged: AND IN SECURITY of the personal obligations before written, I, the said \_\_\_\_\_, DISPONE to and in favour of the

Bank aforesaid, and their foresaids, heritably, but redeemably as *after* mentioned, yet irredeemably in the event of a sale by virtue hereof, **ALL AND WHOLE** (*here describe or refer to the subjects, burdens, &c., as in Form 1, p. 236*). **AND THAT IN REAL SECURITY** to the said bank and their foresaids, of the whole sums of money above written, principal, interest, and penalties: **DECLARING** that the amount of the interest hereby secured over the subjects above disposed shall not exceed the sum of £           , being the amount of three years' interest on the said principal sum of £           , at the rate of five per centum per annum; and the amount of the principal and interest together hereby secured over the said subjects shall not exceed the sum of £           , being the amount of the foresaid principal sum of £           , and of three years' interest thereon at the rate of five per centum per annum; to which sum of £            these presents are hereby restricted, in so far as concerns the heritable security constituted by these presents; without prejudice, however, and reserving always to the said bank and their foresaids, their full and unqualified right, at any time, to make the whole sums of money due under these presents, including interest at the rate from time to time fixed by the said bank, as before provided, effectual under the personal obligations contained in these presents, or out of any separate estate or effects, heritable or moveable, belonging to any of us, the parties hereto: **AND I**, the said           , assign the rents: **AND I**, the said           , assign the writs: **AND I**, the said           , grant warrandice: **AND I**, the said           , reserve power of redemption: **AND we**, the whole parties hereto, oblige ourselves for the expenses of assigning and discharging this security: **AND** on default in payment, **I**, the said           , grant power of sale: **AND we**, the whole parties hereto, consent to registration hereof, and of the foresaid stated account, for preservation and execution.—**IN WITNESS WHEREOF, &c.**

**2. Bond for Cash Credit with a Bank granted by a Co-partnership with Heritable Security.**

**WE** (*name and designation of co-partnership*), as a company; and **we** (*names and designations of partners*), the individual partners of the

said company; and (*names and designations of additional obligants*),  
CONSIDERING that THE BANK have agreed to allow us credit  
upon a cash account, to be kept in the books of the said bank in  
name of us, the said , to the amount of the principal  
sum of £ , upon our granting these presents: THERE-  
FORE we do hereby BIND and OBLIGE ourselves, as full debtors and  
co-obligants, all conjunctly and severally, and the respective  
heirs, executors, and successors whomsoever, of us, the said  
, renouncing the benefit of discussing them in their  
order, to content and pay to the said bank, or their assignees, on  
demand, at any time after two months from the date or last date  
hereof, and that within the head office in of the said  
bank, or within the office or branch where said cash account may be  
kept for the time, the foresaid principal sum, or such part or parts  
thereof as shall at any time be advanced or due upon the said cash  
account; together with interest at the rate which may from time to  
time be fixed by the said bank as chargeable on cash accounts, and  
that from the time or times of advance respectively, until the same  
shall be repaid, with a fifth part more of the said principal sum of  
penalty in case of failure, and so proportionally: DECLARING that the  
sums to be placed to the debit of the said cash account shall embrace  
not only all sums of money which we, the said , or any  
person or persons having our authority, shall value for or draw out,  
by orders or drafts on the said bank, or on any of their officers, but  
also all other debts or liabilities incurred, or which shall be incurred,  
by us to the said bank, in respect of notes or bills discounted or held  
by the said bank, or any of their officers on their behalf, or of letters  
of credit, guarantees, overdrafts on current accounts, or other obli-  
gations, for which we are responsible to the bank, or in any other  
manner of way whatsoever, the amount of all which debts and  
liabilities the said bank shall be entitled, at any time, to place to  
the debit of the said cash account, and that without prejudice to any  
other securities held by them therefor, and without intimation to any  
of us, the parties hereto; but the sums so to be charged or debited,  
exclusive of interest, shall not exceed in all the foresaid principal  
sum: DECLARING that it shall be competent to, and in the power of  
the said bank, if they see fit, to accumulate the said interest, with  
the principal sums due on the said account, at the annual balance of  
the books of the said bank, on whatever date that may be, or at such

other date annually as may be found most convenient for the bank ; and that a docquet of acknowledgment in the bank's books, or **any** separate acknowledgment, signed by us, the said  
or by any person or persons having our authority as aforesaid, **shall** be conclusive as against us, the whole parties hereto, in fixing **the** amount or balance due at the date therein stated, upon the said **cash** account ; and the said bank are hereby authorised, upon the **granting** of any such acknowledgment, to deliver up the whole cheques **and** other vouchers of the sums charged in the said cash account : **AND IT IS HEREBY DECLARED** that a stated account, made out from the books of the said bank, commencing at the date of the last acknowledged balance, if any, and signed by the general manager, cashier, secretary, or accountant of the said bank at , or by the manager, agent, or accountant at the office or branch where said cash account may be kept for the time, shall be sufficient to constitute and ascertain a balance and charge against us, the parties hereto, and our foresaids ; and no suspension shall pass of a charge so constituted and ascertained, but upon consignment only : **AND IT IS HEREBY DECLARED** that nothing herein contained shall prejudice or affect any other securities which the said bank already hold, or may hereafter hold, over stock in the said bank, or over any other stock or property belonging to any of us, it being always in the power of the said bank to allow all or any part of such securities, or the stock or property to which they relate, to be disposed of, sold, or abandoned, without applying the same, or the proceeds thereof, towards payment of any debt to be hereby contracted ; and the obligations hereby undertaken by us shall remain in full force in the same manner and to the same extent as if no such securities had ever existed : **AND IT IS HEREBY DECLARED** that it shall be in the power of the said bank, at their own discretion, and without consulting us, the parties hereto, to transact or compromise with, or give time to any parties, obligants on the said notes, bills, or other obligations, and also generally to transact with us, the said , in the same manner as if we were the only parties bound or liable under these presents, without thereby impairing or affecting the liability of any of us, the other parties hereto : **AND IT IS HEREBY FURTHER SPECIALLY PROVIDED AND DECLARED** that although any change shall take place in any one or more of the partners of the company or firm of , whether by the death or retirement of any one or more of the present partners,

granters hereof, or of any future partner or partners, or by the assumption of other parties, one or more, as partners of the said company or firm, we, the whole parties hereto, and our foresaids, shall, notwithstanding, still remain jointly and severally bound to the said bank for the sums—principal, interest, and penalty—above specified, in the same manner and as fully in every respect as if no such change had taken place in any one or more of the partners of the said company or firm: DECLARING hereby that it is the intention of the whole parties hereto that the obligations undertaken by these presents shall continue to be binding on us, the whole parties, granters hereof, notwithstanding any change in any one or more of the partners of the said company or firm: AND IT IS HEREBY FURTHER PROVIDED AND DECLARED, that however often the said principal sum may be drawn out and replaced, or although the account from time to time should be overdrawn, or should appear with a sum at its credit, these presents shall remain in full force, the same being intended as a continuing security until specially recalled in writing, and duly discharged: AND IN SECURITY of the personal obligations before written, we, the said \_\_\_\_\_, DISPONE to and in favour of The \_\_\_\_\_ Bank aforesaid, and their foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, ALL AND WHOLE (*here describe or refer to the subjects, burdens, &c., as in Form 1, p. 236*); AND THAT IN REAL SECURITY to the said bank, and their foresaids, of the whole sums of money above written, principal, interest, and penalties: DECLARING that the amount of the interest hereby secured over the subjects above disposed shall not exceed the sum of £ \_\_\_\_\_, being the amount of three years' interest on the said principal sum of £ \_\_\_\_\_, at the rate of five per centum per annum; and the amount of the principal and interest together hereby secured over the said subjects shall not exceed the sum of £ \_\_\_\_\_, being the amount of the foresaid principal sum of £ \_\_\_\_\_, and of three years' interest thereon at the rate of five per centum per annum; to which sum of £ \_\_\_\_\_ these presents are hereby restricted, in so far as concerns the heritable security constituted by these presents, without prejudice, however, and reserving always to the said bank and their foresaids, their full and unqualified right at any time to make the whole sums of money due under these presents, including interest at the rate from time to time fixed by the said bank as

before provided, effectual under the personal obligations contained in these presents, or out of any separate estate or effects, heritable or moveable, belonging to any of us, the parties hereto: AND , the said , assign the rents; and , the said , assign the writs; AND , the said , grant warrandice. AND , the said , reserve power of redemption: AND we, the whole parties hereto, oblige ourselves for the expenses of assigning and discharging this security: AND on default in payment, , the said , grant power of sale: AND we, the whole parties hereto, consent to registration hereof, and of the foresaid stated account, for preservation and execution.—IN WITNESS WHEREOF, &c.

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#### SECTION IV

### SECURITIES OVER ENTAILED ESTATES

The narrative in all deeds under these Acts will be regulated by the terms of the petition on which they proceed, and the exact procedure thereon. In this edition these narratives have been materially curtailed, but a form of the longer narrative has been left in the Style of Bond of Annual Rent, p. 273, for those who may prefer this.

#### 1. Bond and Disposition in Security by Heir of Entail in Virtue of Reserved Powers.

I, A (*designation*), heir of entail in possession of the entailed estate of X, CONSIDERING that by Disposition and Deed of Entail executed by me on the                      day of                      , and recorded in the Register of Tailzies on the                      day of                      , and in the Division of the General Register of Sasines applicable to the County of Y on the                      day of                      , I disposed to and in favour of myself and the heirs-male of my body, whom failing, the other heirs therein specified, the lands and estate of X as therein and hereinafter particularly described (*or referred to*), but that always with and under the conditions, provisions, and prohibitory, irritant, and resolute

clauses (or clause authorising registration in the Register of Tailzies) therein contained; and that, *inter alia*, there was by said Disposition and Deed of Entail expressly reserved to me a power to burden and affect the said estate with debt to an amount not exceeding £ sterling, and for that purpose to grant Bond and Disposition in Security in ordinary form containing a power of sale, and all other clauses usual and necessary in Bonds and Dispositions in Security by fee-simple proprietors, over the whole or any part of said estate: AND NOW SEEING that I have resolved, in exercise of said power, to grant these presents in manner under written: THEREFORE I, the said A, grant me to have instantly borrowed and received from B (*designation*) the sum of £ sterling: WHICH SUM I BIND myself and the heirs of entail succeeding to me in said estate (*if desired, add—and subsidiary* my own heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order) to repay (*&c., as in usual form*).

**2. Bond and Disposition in Security over an Entailed Estate for Money authorised to be charged thereon in Virtue of the Entail Acts(a)**

I, A (*full name and designation*), institute (or heir) of entail in possession of the entailed lands and estate of X, lying in the County of Y, CONSIDERING that on the                      day of                      I presented a petition to the Lords of Council and Session, in virtue of the provisions of the Entail Acts and relative Acts of Sederunt, setting forth, *inter alia*, that I was desirous of obtaining their Lordships' authority for charging with debt, to the extent of £                      sterling, the said entailed lands and estate of X; and that I proposed to charge the same with the said sum by granting a Bond and Disposition in Security, or Bonds and Dispositions in Security, in ordinary form over the same for payment of the said sum, or any part or parts thereof, to any person or persons I might think fit: IN which petition I prayed the said Lords to interpose their authority and to grant warrant to

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(a) The Entail (Scotland) Act, 1882, provides that the expression "Entail Acts," shall mean the Acts mentioned in the schedule to that Act, and that Act.

and authorise me to charge the said entailed lands and estate with the said sum of £ , and to make and execute at the sight of the said Lords, in favour of the person or persons who might advance the same, or any part thereof, a bond or bonds for the said sum of £ , or for any sum or sums not exceeding in whole the sum of £ , with a disposition and conveyance, or dispositions and conveyances, of the fee of the said entailed lands and estate in security of the said sum or sums, and of the interest thereof, at the rate of per cent. per annum from the date or dates to be specified in such bond or bonds till repaid, and penalties and expenses to be therein stipulated, the said Bond and Disposition in Security, or Bonds and Dispositions in Security, containing all clauses usual in Bonds and Dispositions in Security granted over estates in Scotland held in fee-simple, or in such form and manner as to the said Lords should seem proper; that after a variety of procedure in the said petition, in the course of which the same was duly intimated and advertised in terms of the statutes, and duly served on C, D, and E (*designations*), being the three nearest heirs of entail entitled to succeed to the said entailed estate immediately after me, Lord , Junior Lord Ordinary (*or* Lord Ordinary officiating on the Bills, *as the case may be*), remitted to Mr. M, W.S., Edinburgh, to inquire into the facts and circumstances set forth in the petition, and whether the provisions of the Statutes and Acts of Sederunt had been complied with, and to report; that a Deed of Consent (*or* Deeds of Consent, *as the case may be*), in terms of the said Acts of Parliament, consenting to my charging the said lands and estate with the said sum of £ in manner before specified, was (*or* were) executed by the said C, D, and E, being the then nearest heirs of entail foresaid, on the and days of , and duly lodged in process; that the said M having lodged his report, Lord , Junior Lord Ordinary (*or* Lord Ordinary officiating on the Bills, *as the case may be*), pronounced the following interlocutor—(*take in at length*); that the draft of these presents was accordingly lodged in process, and revised and adjusted by the said M: AND NOW SEEING that I having instantly borrowed and received from B (*designation*) the sum of £ sterling in consideration of my granting these presents: THEREFORE, in virtue of the Entail Acts and relative Acts of Sederunt, and as specially authorised by the said Lords of Council and Session in manner before mentioned, I do

hereby BIND myself, and the heirs of entail succeeding to me in the said entailed lands and estate of X (*and, if this be desired, add—and subsidarie* my heirs, executors, and representatives whomsoever), to repay to the said B, his executors (*or heirs excluding executors, as may be desired*) or assignees whomsoever, the foresaid sum of £ sterling, and that at the term of , &c.

The obligation for payment and disposition in security will proceed, and the deed will be completed in the usual form, as given on p. 236, the obligation for payment of the expenses of discharging or assigning the security being imposed on the borrower and his heirs of entail (*and, if desired, also—subsidarie* on his heirs, executors, and representatives whomsoever), as above.

If the borrower binds himself and his heirs of entail and other heirs, and his executors and representatives whomsoever, all jointly and severally, without the necessity of discussion, which the lender may possibly require him to do, it is thought that the subsidiary liability of the heirs-general would be established by the fact that the loan was intended to be a charge on the entailed estate; but it may be advisable to leave no doubt on this point by inserting the following declaration immediately before the disposition in security:—

DECLARING ALWAYS that the heirs of entail succeeding to me in the said lands and estate of X, shall be bound and obliged to relieve my other heirs, and my executors and representatives whomsoever, of the whole sums of money—principal, interest, and penalties—before specified, and likewise of the expenses of assigning and discharging this security: BUT which declaration shall nowise limit or affect the obligation and security hereby granted to the said B and his foresaids, who shall be entitled to use all diligence and execution competent by law against me and my whole heirs and my executors and representatives, and against my whole estate, or any part thereof, for payment or security of the sums hereby due, and of the said expenses, as fully and freely as if the said declaration had not been inserted in these presents, the same being intended only to explain and regulate the rights and liabilities of my several heirs and representatives *inter se*.

We shall now give examples of Bonds of Annual Rent and Bonds and Dispositions in Security for money authorised to be charged upon an entailed estate on account of outlay in improvements thereon. The narrative of the bonds should set forth shortly the substance of the petition to the Court and the procedure following thereon, and should recite the

interlocutors authorising the borrowing of the money, or constituting the right of annual rent, and approving of the form of the bond.

In former editions of these 'Styles,' forms have been given applicable to charges for improvements made under the Entail Improvement Act, 10 Geo. III. c. 51 (the Montgomery Act), as distinguished from forms for charges made under the later Acts; but as all the improvements provided for in the Montgomery Act are included amongst the improvements mentioned in the Entail Amendment Act, 1875, it does not seem necessary to continue giving forms specially applicable to Montgomery Act Improvements.

Under the 1875 Act it is now competent for the heir of entail in possession to charge improvements already executed, in course of execution, or in contemplation.(a)

**3. Bond of Annual Rent over Entailed Estate, for Money authorised to be Borrowed on the Security thereof, for Improvements already executed on the Estate.(b)**

I, A (*designation*), heir of entail in possession of the entailed lands and estate of X and others, lying in the County of Z, CONSIDERING that, in virtue of the Entail Acts and relative Acts of Sederunt, I, on or about the                      day of                      in the year                      , presented a petition to the Lords of Council and Session, Division, Junior Lord Ordinary, Mr                      , Clerk (or to the Sheriff of the County of                      , *as the case may be*) craving authority, *inter alia*, to grant a Bond or Bonds of Annual Rent over the said lands and others in respect of certain improvements made thereon by me, and of the costs of the said petition and proceedings therein and of obtaining the loan and granting security therefor, all in accordance with the provisions of the Entail Acts and relative Acts of Sederunt; and that after certain procedure in conformity with the said Acts, in the course of which a remit was made to Mr.                      , W.S., Edinburgh, to report as to the circumstances set forth in the said petition, and whether the provisions of the Entail Acts and Acts of Sederunt had been complied with; and to N

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(a) As to improvements under the Crofters' Holdings (Scotland) Act, 1886, see *Thompson Sinclair*, 1 S. L. T. 531.

(b) Applications to charge for improvement expenditure under the Entail Amendment Acts of 1875 and 1878 may be made in the Sheriff-Court (45 & 46 Vict. c. 53, s. 5); but where the heir of entail in possession is under age the application is competent in the Court of Session only (45 & 46 Vict. c. 53, s. 11).

(*designation*), to report as to the nature and extent of said improvements, Lord                      pronounced the following interlocutor, viz.—  
(*take in at length*): AND CONSIDERING that I have arranged to borrow from                      , in pursuance of the said interlocutor, the said sum of £                      , being the total amount of the cost of said improvements, together with the estimated amount of the cost of the said petition and proceedings thereon, and of obtaining the loan and granting security therefor, on condition of my granting these presents in virtue of the authority contained in the said interlocutor; and that the draft hereof has accordingly been lodged in process and adjusted at the sight of the Court. AND NOW SEEING that in consideration of my granting these presents, F (*designation*) has instantly advanced to me the sum of £                      sterling, whereof I hereby acknowledge the receipt: THEREFORE, in virtue of the Entail Acts, and as specially authorised as aforesaid by the said Lords of Council and Session, I DO hereby BIND myself, and the heirs of entail succeeding to me in the said entailed lands and estate of X (*and, if desired, add—* and *subsidiarie* my heirs, executors, and representatives whomsoever), to pay to the said F, his executors (*or* heirs excluding executors) or assignees whomsoever, an annual rent of £                      sterling, being an annual rent at the rate of £7, 2s. sterling for every £100 of the foresaid sum of £                      yearly, during the full period of twenty-five years after the                      day of                      , being the date of the decree authorising the said charge, and that half-yearly during the last-mentioned period, at the terms of Whitsunday and Martinmas in each year, by equal portions, beginning the first term's payment thereof at the term of Whitsunday (*or* Martinmas) next, for the period between said date and that term, and the next term's payment at Martinmas (*or* Whitsunday) following for the half-year preceding, and so forth half-yearly at the said two terms during the said period of twenty-five years, the proportion of the said annual rent corresponding to the period between the last termly payment thereof and the last day of the said period of twenty-five years being payable upon the said last-mentioned day, with a fifth part more of each termly or proportional payment of the said annual rent of liquidate penalty in case of failure in the punctual payment thereof, and the interest of each termly or proportional payment of the said annual rent, at the rate of £                      per centum per annum, from the date when the same falls due during the not-payment: AND IN SECURITY

of the personal obligation before written, but under the provisions and declarations after referred to, I, the said A, DISPONE to and in favour of the said F and his foresaids, not only ALL AND WHOLE an annual rent of £                    sterling, being an annual rent at the rate of £7, 2s. sterling yearly (a) for every £100 of the foresaid sum of £                   , during the full period of twenty-five years foresaid, to be uplifted and taken half-yearly during said period, at the foresaid terms of Whitsunday and Martinmas, by equal portions, beginning the first term's uplifting thereof at the term of Whitsunday (or Martinmas) next (*as the case may be*) for the period between the date of said decree and said term, and the next term's uplifting at the term of Martinmas (or Whitsunday) following for the half-year preceding, and so forth half-yearly at the said two terms during the said period of twenty-five years, the proportion of the said annual rent corresponding to the period between the last termly payment thereof and the last day of the said period of twenty-five years being upliftable upon the said last-mentioned day, with a fifth part more of each termly or proportional uplifting of the foresaid annual rent of liquidate penalty in case of failure in the punctual payment thereof, and the interest of each termly or proportional uplifting of the said annual rent, at the rate of £                    per centum per annum, from the date when the same falls due, during the not-payment, furth of ALL AND WHOLE (*here describe or validly refer to the entailed lands or estate, or the portions thereof intended to be covered by the security, and specify or refer to real burdens, conditions, &c., if any, other than the conditions of the entail*), or furth of any part or portion thereof, and readiest rents and profits of the same, other than and excepting the mansion-house, offices, and policies thereof; but also ALL AND WHOLE the said several lands and others before described, and pertinents thereof, other than and excepting as aforesaid, with the whole rights, title, and interest, present and future, and whether of property or superiority, of me, or the heirs of entail succeeding to me, therein: AND THAT IN REAL SECURITY to the said F and his foresaids of the annual rent payable by me as aforesaid, interest thereof, and penalties above specified, if incurred: BUT DECLARING ALWAYS that these presents are granted with and under the conditions, provisions, and declarations relative to Bonds of Annual Rent over entailed estates

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(a) The next heirs are entitled to object that this rate is too high (*Murray Stewart, Petitioner*, 1898 (O. H.), 36 S. L. R. 623).

specified and contained in the Entail Acts, in so far as applicable thereto: AND I assign the rents, so far as necessary to satisfy and pay the foresaid annual rent, with the interest thereof and penalties before stipulated in case of failure, if incurred: AND I ASSIGN the writs, so far as necessary to support the right and security hereby granted: AND I grant warrandice, but always under the conditions, provisions, and declarations before referred to: AND I oblige myself and my foresaids for the expenses of assigning and discharging this security: AND I consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

It will be remembered that the limitation of outlay to four years' free rent for improvements on the estate, and to two years' free rent for improvements on the mansion-house, only applied where the improvements were constituted under the Montgomery Act.

#### 4. Bond of Annual-Rent for Future Improvements.

I, A (*designation*), heir of entail in possession of the entailed lands and estate of X and others lying in the County of Z, CONSIDERING that in virtue of the "Entail Acts" and relative Acts of Sederunt, on or about the                      day of                      in the year                      , I presented a petition to the Lords of Council and Session (                      Division, Junior Lord Ordinary, Mr.                      , Clerk) (*or*, the Sheriff of the County of                      , *as the case may be*), setting forth, *inter alia*, that I was heir of entail in possession of the said entailed lands and estate by virtue of the Disposition and Deed of Entail therein specified, and had completed a feudal title thereto; that I had in contemplation to execute certain improvements therein specified on said entailed lands and estate, the estimated cost of which was £                      , conform to account thereof to be produced in the course of the proceedings to follow on the said petition; that I was of full age; that the three next heirs of entail entitled to succeed to the said entailed estate in their order successively immediately after me, under the destination contained in the said Deed of Entail, and whose consents would be required to enable me to disentail the same, were my three sons, C, D, and E, residing in family with me at                      (*or otherwise design, if required*); that the said C, D,

and E had no guardians other than me, who was their administrator-in-law, and it would therefore be necessary to appoint a tutor or tutors *ad litem* to them (*or as the case may be*); that in the circumstances therein set forth I was desirous to avail myself of the provisions of the Entail Acts with reference to borrowing money to defray the cost of said contemplated improvements, including the actual or estimated costs of the said application and proceedings therein, and of obtaining the loan and granting the security therefor, and to grant Bond of Annual Rent for the same, all in terms of the Entail Acts; that I would produce therewith (which I accordingly did) a schedule in proper form as to the debts and provisions affecting, or that might be made to affect, the fee of said entailed lands and estates or the heirs of entail, in terms of the said Acts: AND I therefore prayed their Lordships, after intimation, advertisement, and service as therein mentioned, to appoint a fit and proper person or persons to act as tutor or tutors *ad litem* (*or as the case may be*) to the said C, D, and E, and thereafter, on resuming consideration of the said petition, with or without answers, and after such procedure or inquiry into the facts as their Lordships might deem necessary, to find that said proposed improvements were of the nature contemplated by the Entail Acts, and would, if well executed, be a permanent improvement, and beneficial to the estate; to determine the amount to be borrowed by me to defray the cost thereof, and to grant authority to me to borrow the sum of £ , or such other amount as might be determined by their Lordships to be sufficient to defray the cost of the said improvements, together with such sum as their Lordships might find to be the actual or estimated cost of the said application and proceedings therein, and of obtaining the loan and granting the security therefor; as also to make an order for the consignation in bank of the said sum of £ , or such other amount as might be determined by their Lordships, on a receipt payable to the orders of the Court, and thereafter to make such further order, and give such directions in the process as their Lordships might think necessary from time to time, for the inspection of the said improvements while in course of execution, and to grant orders from time to time for payment out of the consigned money to me, or in the case of my death to my personal representatives or other successors entitled thereto and sisted in the process, of the cost of the improvements, so far as

executed to their Lordships' satisfaction, paid for by me, or for which I was liable, and of the expenses of the loan and security and of the process; and to grant warrant to and authorise me to execute in favour of myself and my assignees, or any person or persons I might think fit, a Bond or Bonds of Annual Rent in ordinary form over the said entailed lands and estate, or any portion thereof other than the mansion-houses, offices, and policies thereof, binding myself and my heirs of tailzie to make payment of an annual rent on the said sum of £ , or such other amount as might be determined as the sum to be borrowed to defray the cost of said improvements, and also on such sum as their Lordships might find to be the actual or estimated costs of the said application and proceedings therein, and of obtaining the loan and granting security therefor payable said annual rent during the period of twenty-five years from and after the expiration of two years from the date of consignation of said sum of £ , or such other amount as might be determined by their Lordships as aforesaid, such annual rent to be payable by equal portions half-yearly, at the term of Whitsunday and Martinmas in each year, and to be at a rate not exceeding £7, 2s. per annum for every £100 so authorised to be borrowed, and so in proportion for any greater or less sum; and to pronounce such other order or orders, and to do otherwise in the premises as to their Lordships should seem proper and consistent with the terms of the said Acts, all as the said petition in itself more fully bears: AND FURTHER CONSIDERING, that after due intimation, advertisement, and service of the said petition, Lord , Junior Lord Ordinary (or Lord Ordinary officiating on the Bills, or Sheriff, as the case may be), did, upon the day of in the year , appoint K, W.S., Edinburgh, to be tutor *ad litem* to the said C, D, and E, and the said tutor *ad litem* being present at the Bar took the declaration *de fidei administratione officii*, and was allowed to see the process; that a minute having been lodged for the said tutor *ad litem*, to the effect that he had examined the proceedings and was satisfied therewith, Lord , Junior Lord Ordinary (or Lord Ordinary officiating on the Bills, or Sheriff, as the case may be), did, upon the day of , remit to M, W.S., Edinburgh, to inquire into the circumstances set forth in the said petition, and whether the statutes had been complied with, and further remitted to N, architect, Edinburgh, to report with regard to the said proposed

improvements, whether the same were of the nature contemplated by the statutes, and, if well executed, would be of a substantial nature and beneficial to the estate, and whether they would cost the said sum of £                      in their execution, and recommended him to communicate with the said M before completing his report, and that reports were lodged by the said M and N; that after some further procedure Lord                      , Junior Lord Ordinary (*if necessary add*—before whom the said petition had come to depend) (*or Sheriff*) pronounced the following interlocutor, viz.—(*take in at length(a)*) : AND NOW SEEING that I, the said A, have resolved to exercise the powers conferred upon me by the said interlocutor of granting a Bond of Annual Rent for the said sum of £                      sterling, to defray the cost of the said contemplated improvements, and the said sum of £                      sterling, being the estimated cost of the application and proceedings therein, and of obtaining the loan and granting security therefor as aforesaid, amounting together said sums to the sum of £                      sterling; and that in consideration of my granting the Bond of Annual Rent under written over the said entailed lands and estate, B (*designation*) has instantly advanced the sum of £                      (being the amount of the said two sums of £                      and £                      as aforesaid), which has been duly consigned in the Bank of Scotland, on a receipt dated the                      day of                      , payable to the order of the Court in the petition before recited, and that the said consignment receipt has been lodged in the said process, all at the sight of the said M, and in terms of the interlocutor above quoted, and that the draft of these presents having in terms of the said interlocutor been lodged in process, has been adjusted by the said M: THEREFORE, in virtue of the “Entail Acts,” and as specially authorised as aforesaid, I, the said A, DO hereby BIND and OBLIGE myself, and the heirs of entail succeeding to me in the said entailed lands and estate of X and others, in their order respectively (*and, if desired, add—and subsidiairie* my heirs, executors, and representatives whomsoever), to pay to the said B, his executors (*or his heirs excluding executors*) or assignees whomsoever, an annual rent of £                      sterling, being an annual rent at the rate of £7, 2s. for every £100 of the foresaid sum of £                      yearly during the full period of twenty-five years from and after the                      day of                      (being

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(a) Entail Amendment Act, 1875, s. 7, subs. 8.

two years from the date of consignation as aforesaid), and that half-yearly during the said period, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the term of                    for so much of said annual rent as shall then be due, and the next term's payment at                    following for the half-year preceding, and so forth half-yearly at the said two terms during the said period of twenty-five years, the proportion of the said annual rent corresponding to the period between the last termly payment thereof, and the last day of the said period of twenty-five years being payable upon the said last-mentioned day, with a fifth part more of each termly or proportional payment of the said annual rent of liquidate penalty in case of failure in the punctual payment thereof, and the interest of each termly or proportional payment of the said annual rent at the rate of £                    per centum per annum from the date when the same falls due during the not-payment: AND IN SECURITY of the personal obligation before written, but under the provisions and declarations after referred to, I DISPONE to and in favour of the said B and his foresaids, not only ALL AND WHOLE an annual rent of £                    sterling (*same amount as before*), being an annual rent at the rate of £7, 2s. for every £100 of the foresaid sum of £                    yearly during the said period of twenty-five years from and after the said                    day of                    , to be uplifted and taken half-yearly during the foresaid period at the said terms of Whitsunday and Martinmas, by equal portions, beginning the first term's uplifting thereof at the foresaid term of                    , for so much thereof as shall then be due, and the next term's uplifting at                    thereafter for the half-year preceding, and so forth half-yearly and termly at the said two terms during the said period of twenty-five years, the proportion of the said annual rent corresponding to the period between the last termly payment thereof and the last day of the said period of twenty-five years being upliftable upon the said last-mentioned day, with a fifth part more of each termly or proportional uplifting of the foresaid annual rent of liquidate penalty in case of failure in the punctual payment thereof, and the interest of each termly or proportional uplifting of the said annual rent at the rate of £                    per centum per annum from the date when the same falls due during the not-payment, furth of ALL AND WHOLE (*here describe or validly refer to the entailed lands or estate or portions thereof intended to be*

*conveyed in security, and specify or refer to real burdens, conditions, &c., if any, other than those of the entail as before directed p. 272*); but excepting always and reserving from the lands and others before described the mansion-house, offices, and policies of the said entailed lands and estate; or furth of any part or portion of the said several lands and others (excepting as aforesaid), or readiest rents and profits of the same; but also ALL AND WHOLE the said several lands and others before described (*or referred to*), with the pertinents thereof themselves, excepting as aforesaid, together also with the whole right, title, and interest, present and future, whether of property or superiority, of me or the heir of entail succeeding to me therein; AND THAT IN REAL SECURITY to the said B and his foresaids of the annual rent payable by me as aforesaid, interest thereof, and penalties above specified, if incurred: BUT DECLARING ALWAYS that these presents are granted with and under the conditions, provisions, and declarations relative to Bonds of Annual-Rent over entailed estates specified and contained in the Entail Acts, so far as the same are applicable hereto: AND I assign the rents, and also the feu-duties and casualties of superiority, so far as necessary to satisfy and pay the foresaid annual rent: AND I assign the writs so far as necessary to support the right and security hereby granted: AND I grant warrandice, but always with and under the conditions, provisions, and declarations before referred to: AND I OBLIGE myself and my foresaids for the expenses of assigning and discharging this security: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

By the Entail Amendment Act, 1875, and by the form given above for Bonds of Annual-Rent, no heritable security is expressly provided for payment of interest on the amount borrowed during the two years before the commencement of the annual-rent. This is probably an omission in the statute. Of course, if the heir of entail survives during these two years, he can give a valid security over the rents for this interest, but if he dies before the annual-rent becomes payable, his executors alone, and not the estate, would seem to be liable for it. The difficulty may be met either—(*first*) by getting the two years' interest repaid at once under discount, or taking good security, apart from the entailed estate, for it; or (*second*) by inserting in the prayer of the petition, and having specially inserted in the interlocutor authorising the charge an authority to grant security (in addition to the annual-rent) over the entailed estate for interest at            per cent. on the amount to be borrowed for the two years before the annual-rent comes into operation. This latter seems to be the preferable alternative, and we understand that it has had the sanction of the Court in several cases.

The Entail Amendment Act, 1875 (38 & 39 Vict. c. 61, s. 9), and the Entail Amendment Act, 1878 (41 & 42 Vict. c. 28, s. 3), provide for the substitution of a Bond and Disposition in Security for the balance of capital remaining due under a Bond of Annual-Rent or rent charge. The expenses of making application to the Court and of obtaining the loan cannot be charged on the estate (*Stewart*, 13 R. 568).

The Entail (Scotland) Act, 1882, s. 6, subs. 4, provides that where the heir in possession has defrayed at least one-fourth part of a capital sum borrowed for improvements on the security of a terminable rent charge, he may without consent of the nearest heir substitute a Bond and Disposition in Security for the remainder of such capital sum.

##### 5. Bond and Disposition in Security for Improvement Outlay already Expended, or in Contemplation.(a)

I, A (*designation*), heir of entail in possession of the entailed lands and estate of X and others lying in the County of L, CONSIDERING that under and in virtue of the "Entail Acts" and relative Acts of Sederunt, I did on or about the                      day of                      in the year                      , present a petition to the Lords of Council and Session (*or the Sheriff of the County of*                      , *as the case may be*), setting forth, *inter alia*, that I was heir of entail in possession of the said entailed lands and estate by virtue of the Deed of Entail therein mentioned, and had completed a feudal title thereto conform to the writs therein mentioned; [*E*] that I had, prior to the date of said petition, laid out and expended various sums on improvements on the said entailed lands and estate of the nature contemplated by the said Acts, the costs of which amounted to £                      sterling or thereby, conform to account thereof to be produced in the course of the proceedings to follow thereon; that the whole of the said sum of £                      had been expended by me in executing improvements on the said entailed estates within the meaning of the said Acts [*F*] (*when for future improvements omit* [*E*])

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(a) Where improvements of the nature contemplated by the Entail Amendment Act, 1875, had been executed *prior* to the application to the Court for leave to charge, it was provided that the security could take the form of a Bond of Annual-Rent for the amount passed, or, in the option of the petitioner, of a Bond and Disposition in Security for two-thirds of the sum on which the Bond of Annual-Rent would be calculated in terms of the Act. The Act of 1882 removed the restriction to improvements executed *prior* to the application, and allowed the estate to be charged with three-fourths of the sum.

to [F], and insert—that I contemplated making certain improvements on the said entailed lands and estate, the estimated cost of which was £           ); that I was of full age; that the three next heirs of entail entitled to succeed to the said entailed lands and estate immediately after me, under the said deed of entail, and whose consents would be required by me in order to disentail the same, were C (*designation*) and D (*designation*), who were of full age and subject to no legal incapacity, and E, who was a pupil, being the eldest son of the said D, and who resided in family with his said father; that the said D had no guardian other than his said father, who was his administrator-in-law, and it would therefore be necessary to appoint a tutor *ad litem* to him; that in the circumstances therein set forth I was desirous to avail myself of the provisions of the foresaid Acts, with reference to borrowing money to defray the cost of said improvements, including the actual or estimated cost of the said applications and proceedings therein, and of obtaining the loan and granting security therefor, and to grant Bond of Annual-Rent for the same, or Bond and Disposition in Security for three-fourth parts thereof, all in terms of the said Acts; that I would produce therewith (which I accordingly did) a schedule in proper form as to the debts and provisions affecting or that might be made to affect the fee of said entailed lands and estate, or the heirs of entail succeeding thereto, in terms of the said Acts: AND I therefore prayed their Lordships, after intimation, advertisement, and service as therein set forth, to appoint a fit and proper person to act as tutor *ad litem* to the said E, and thereafter, on resuming consideration of the said petition, with or without answers, and after such procedure and inquiry into the facts as their Lordships might deem necessary, [G] to find that said improvements executed by me were of the nature contemplated by the said Acts, and that the foresaid sum of £           , or such other sum as might be ascertained by their Lordships to have been expended on said improvements, was *bond fide* expended by me while heir of entail in possession of said entailed lands and estate; and to grant authority to me to borrow the said sum of £           , or such other sum as might be ascertained by their Lordships to have been expended as aforesaid [H] (*if for future improvements omit [G] to [H]*), and insert—to find that the said improvements were of the nature contemplated by the statutes, and that if well executed they would be of a substantial nature and beneficial to the estate, and

that they would cost the said sum of £                      in their execution, and to grant authority to me to borrow the said sum of £                      , or such other sum as might be ascertained by their Lordships to be the cost of said improvements), together with such other sum as their Lordships might find to be the actual or estimated costs of the said application and proceedings therein, and of obtaining the loan and granting security therefor; and to grant warrant to and authorise me to execute, in favour of myself and my assignees, or any other person or persons I might think fit, a Bond or Bonds of Annual-Rent in ordinary form over the said entailed lands and estate, or any portion thereof other than the mansion-house, offices, and policies thereof, binding myself and the heirs of entail succeeding to me therein to make payment of an annual rent on the said sum of £                      , or such other sum as might be ascertained [I] to have been expended on said improvements [K] (*if for future improvements omit [I] to [K], and insert—*to be the cost of said improvements), together with the actual or estimated cost of the foresaid application and proceedings, and obtaining the loan and granting security, all as before-mentioned, or, in my option, and in lieu of such Bond of Annual-Rent, to execute a Bond and Disposition in Security over said entailed lands and estate, or any portion thereof other than the mansion-house, offices, and policies thereof, for three-fourths of the sum so expended (or to be expended), together with three-fourths of the costs above referred to, all in terms of and agreeably to the provisions of the said Acts; and to pronounce such other order or orders, and to do otherwise in the premises as to their Lordships should seem proper—all as the prayer of said petition in itself more fully bears: AND FURTHER CONSIDERING that after due intimation, advertisement, and service of the said petition, Lord                      , Junior Lord Ordinary (or Lord Ordinary officiating on the Bills, or the said Sheriff), did, upon the                      day of                      in the year                      , appoint Mr. K, W.S., Edinburgh, to be tutor *ad litem* to the said E, and the said tutor *ad litem* being present at the Bar took the declaration *de fidei administratione officii*, and was allowed to see the process; that a minute having been lodged for the said tutor *ad litem* to the effect that he had examined the proceedings and had no observations to offer at that stage, the said Lord                      (*or as the case may be*) did, upon the                      day of                      , remit to Mr. M, W.S., Edinburgh, to inquire into the circumstances set forth in the

petition, and whether the Entail Acts had been complied with, [L] and also to examine the accounts and vouchers of expenditure and to report; and further remitted to Mr. N, architect, Edinburgh, to examine the improvements set forth in the petition, and to report whether they were of the nature contemplated by said Acts, and whether the sum of £                      or what part thereof had been *bond fide* expended by me in said improvements [O] (*if for future improvements omit [L] to [O], and insert—*and further remitted to Mr. N, architect, Edinburgh, to report whether the said improvements are such as are contemplated by the said Acts, and whether if well executed they will be of a substantial and permanent nature and beneficial to the estate, and whether they would cost the said sum of £                      ), and recommended him to communicate with Mr. M before completing his report, and that reports were lodged by the said M and N; that after some further procedure, in the course of which a minute was lodged for the said K, as tutor *ad litem* to the said E, to the effect that he had examined the proceedings and was satisfied therewith, the said Lord                      (*or if this be the case, Lord                      , Junior Lord Ordinary, before whom the said petition had come to depend, or the said Sheriff*) pronounced the following interlocutor, viz.—(*take it in at length*): AND NOW SEEING that I have resolved to exercise the powers conferred upon me by the foresaid interlocutor, of granting a Bond and Disposition in Security for the said sum of £                      sterling [being three-fourth parts of the said sum of £                      , and the sum of £                      , being three-fourths of the estimated cost of the said application and proceedings therein, and obtaining the loan and granting security therefor as aforesaid]; and that in consideration of my granting these presents, F (*designation*) has instantly advanced [P] and paid to me the said sum of £                      sterling, whereof I hereby acknowledge the receipt [Q] (*if for future improvements omit [P] to [Q], and insert—the said sum of £                      (insert cumulo amount of three-fourths of expenditure and of three-fourths of costs, as above), which has been duly consigned in the                      Bank of Scotland, on a receipt dated the                      day of                      , payable to the order of the Court in the petition before recited, and that the said consignment receipt has been lodged in the said process, all at the sight of the said M, and in terms of the interlocutor above recited*); and that the draft of these presents having, in terms of the said interlocutor, been lodged in process, has been adjusted by the said M:

THEREFORE, in virtue of the Entail Acts, and as specially authorised as aforesaid, I, the said A, as heir of entail foresaid, DO hereby BIND and OBLIGE myself, and the heirs of entail succeeding to me in the said entailed lands and estates in their order respectively (*and, if desired, add—and subsidarie* my heirs, executors, and representatives whomsoever), to repay to the said F, and his executors (*or his heirs excluding executors*) or assignees whomsoever, the said principal sum of £        sterling, at the term of (*here insert date and place of repayment in ordinary form*), with a fifth part more of liquidate penalty in case of failure, and the interest of the said principal sum at the rate of £        per centum per annum from the date hereof to the said term of payment, and half-yearly, termly, and proportionally thereafter during the not-payment of the same, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said interest at the said term of next, for the interest due preceding that date, and the next term's payment thereof at        following, and so forth half-yearly, termly, and proportionally thereafter during the not-payment of the said principal sum, with a fifth part more of the interest due at each term of liquidate penalty in case of failure in the punctual payment thereof: AND IN SECURITY of the personal obligation before written, I DISPONE, but always with and under the exception and reservation after mentioned, to and in favour of the said F and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, ALL AND WHOLE (*here describe or validly refer to the subjects of security as in an ordinary Bond and Disposition in Security, p. 236*); but excepting always and reserving from the lands and others before disposed the mansion-house, offices, and policies of the said entailed lands and estate; AND THAT IN REAL SECURITY to the said F and his foresaids of the whole sums of money above written—principal, interest, and penalties: DECLARING ALWAYS that these presents are granted with and under the conditions, provisions, and declarations relative to Bonds and Dispositions in Security over entailed estates specified and contained in the foresaid Acts and Acts of Sederunt, in so far as the same are applicable hereto: AND I assign the rents, and also the feu-duties and casualties of superiority: AND I assign the writs: AND I grant warrandice: AND I reserve power of redemption: AND I oblige myself and my foresaids for the expenses of assigning and discharging this security: AND on default

in payment I grant power of sale: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

By section 7 (subs. 6), of the Entail Amendment Act, 1875, it is enacted: "In every case the Court shall, on fixing the amount to be borrowed under their authority, add to the actual or estimated amount of the cost of the improvements the actual or estimated amount of the cost of the application and the proceedings therein, and of obtaining the loan and granting security therefor."

By section 8 of the same Act, it is provided that a Bond and Disposition in Security (where applicable) shall be for two-thirds of the sum for which a Bond of Annual Rent, if granted, would be calculated in terms of the Act. This is extended to three-fourths by the 1882 Act.

In the case of loans by way of annual-rent, no difficulty can arise about the expense of the application and of obtaining the loan, as the whole cost of the improvements is charged on the estate; but in the case of loans by way of Bond and Disposition in Security, where only three-fourths of the improvements is so charged, the Court, in fixing the "amount to be borrowed," will, according to *Gillon Fergusson* (O. H.), 24 S. L. R. 113, and *Leith v. Leith*, 15 R. 944; 25 S. L. R. 671, authorise only three-fourths of the cost of the application and of obtaining the loan to be charged on the fee of the estate.

A Bond and Disposition in Security to trustees appointed by the Court for the heir of entail in possession and the heirs of entail, in their order, may be taken as an investment for entailed money in terms of section 23 (subs. 4) of the Entail (Scotland) Act, 1882.

A Bond and Disposition in Security charging Estate Duty and Settlement Estate Duty upon the fee of the entailed estate, but not the expenses of settling the duty or of the petition to charge, may be granted by an heir of entail who has paid these duties (Finance Act, 1894 (57 & 58 Vict. c. 30, s. 9 subs. 6); Entail Amendment Act, 1868 (31 & 32 Vict. c. 84, s. 11). *Laurie*, 25 R. 636; 35 S. L. R. 498).

A Bond and Disposition in Security may under the Entail Amendment Act, 1875, s. 5, subs. 2(a), and the Entail (Scotland) Act, 1882, s. 13, be granted by the heir in possession in favour of an heir who refuses to consent to a disentail, for the value in money of such refusing heir's expectancy.(b)

A Bond and Disposition in Security may, on proceedings being taken by a creditor of the heir in possession for a sale of the estate under the Entail (Scotland) Act, 1882, s. 18, be granted in virtue of that section by the heir in possession, whom failing, by the Clerk of Court in favour of a non-consenting heir for the value in money of such heir's expectancy.(b)

The 1882 Act, s. 13, provides for the protection of the rights of creditors of an heir whose consent is required to a disentail, and of the wife and children of an heir for their provisions granted under the Entail Acts.

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(a) If such bond be "proper security" (*Farquharson v. Farquharson's Curator ad litem*, 1886, 14 R. 231; 24 S. L. R. 200). Provision of section 18 contrasted in *Somervell's Trustee v. Dawes*, 1903, 5 F. 1065; 40 S. L. R. 802; 11 S. L. T. 259.

(b) Such non-consenting heir must accept a Bond and Disposition in Security (*Somervell's Trustee, Petitioner*, 1903 (O. H.), 10 S. L. T. 780; and *Somervell's Trustee v. Dawes, supra*).

In the case of the disentail and sale of an entailed estate, section 25 of the 1882 Act provides for the granting of a Bond and Disposition in Security when a portion of the price is to be secured on the estate ; or, as an alternative, for the recording in the Register of Sasines of a decree of Court constituting a real burden.

We now give forms of two writs introduced by the Entail Amendment Act, 1875, 38 & 39 Vict. c. 61—(1) Assignment of the Right to Charge Improvements on entailed estates ; and (2) Schedule of Debts, which comes in place of the affidavit formerly in use. A form of this schedule has already been given in Title VI. above, p. 233.

The assignation can easily be varied so as to suit the case of a loan on the security of the improvements, with a definite sum as the consideration for the granting, and clauses of retrocession ; but on the whole, in such a transaction it seems best to grant an absolute assignation and take a back-letter. It can also be easily adjusted to the case of a *mortis causa* assignation.

The schedule can be altered without difficulty to suit the special circumstance of each case.

### 6. Assignment of Right to Charge Improvements

(38 & 39, c. 61, s. 11).

I, A (*designation*), heir of entail in possession of the entailed lands and estate of X and others, situated in the parish of Y and County of Z, under and by virtue of a Deed of Entail by the late  
of \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, and  
recorded in the Register of Tailzies the \_\_\_\_\_ day of \_\_\_\_\_,  
and also in the Books of Council and Session the \_\_\_\_\_ day  
of \_\_\_\_\_ in the year \_\_\_\_\_ / \_\_\_\_\_, CONSIDERING that I have at  
various times expended sums of money amounting in all at this date  
to £ \_\_\_\_\_ sterling, conform to schedule and statement hereto  
annexed and signed by me as relative hereto, in executing improve-  
ments on the said entailed lands and estate of the nature contemplated  
by the Entail Acts, but have not yet taken any proceedings for charg-  
ing the same upon the said entailed lands and estate or the heirs of  
entail succeeding to me therein ; and that I have agreed to assign the  
said sums and my whole rights and claims in the premises to B (*name  
and designation*): THEREFORE, in virtue of the Entail Amendment  
Act, 1875, and subsequent Entail Acts, and in CONSIDERATION OF (*here  
state the price, if any, or if no price say*—and for certain good and  
onerous causes and considerations, but without any price being paid  
therefor), I DO hereby DISPONE, CONVEY, ASSIGN, and MAKE OVER to and

in favour of the said B, and his executors and assignees whomsoever, the whole of the foresaid sums of money for which I am at present a creditor of the said entailed lands and estate and the heirs of entail succeeding to me therein, in respect of improvements thereon already made and executed by me, together with the whole claims, rights, and interests competent to me, my heirs, executors, and representatives whomsoever, in respect of the said improvements against the heirs of entail succeeding to me in the said entailed lands and estate, and against the said entailed lands and estate and the rents of the same, together with the whole vouchers and instructions thereof: WITH full power to my said assignees to do everything in the premises which I could have done myself, or which they as my assignees can do in virtue of any Entail Acts at present existing or hereafter to be passed; and particularly with full power (in the event of my death before the charging of my said entailed lands and estate with the amount of improvement outlay which I am or may be entitled to charge thereon) to my assignees to present the necessary petition or petitions to the Court of Session in terms of said Acts (*the following clause may be inserted where the assignation is inter vivos and for onerous consideration*): AND I BIND and OBLIGE myself, and my heirs, executors, and representatives whomsoever, whenever called on by my assignees, and at my expense, to present and carry through all necessary petitions to the said Court, and to grant, subscribe, and deliver all writs and deeds which may be necessary for fully vesting my assignees in the rights and claims hereby assigned: AND I BIND myself and my foresaids not to charge said estate with any other improvement, expenditure, or other sums until the claims hereinbefore conveyed have been charged thereon: AND I BIND and OBLIGE myself and my foresaids to warrant this assignation and conveyance from all facts and deeds done or to be done by me in prejudice hereof: AND I have herewith delivered up the vouchers of the said expenditure: AND I consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

In the case of estates held under entails dated on or after 1st August 1848, the necessary alterations and additions to such a deed as the above are so simple and manifest that it appears unnecessary to specify them here.

**7. Affidavit and Schedule in the Petition of A of X for Authority to Charge with Debt.**

At \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ in the  
 year \_\_\_\_\_, in presence of C (*designation*), one of  
 His Majesty's Justices of the Peace for the  
 of \_\_\_\_\_.

COMPEARED A, presently residing at X in the county of Z, heir of entail in possession of the entailed lands and estate of X in the said county, and the petitioner in an application presented to, and presently in dependence before, the Lords of Council and Session, Division, Junior Lord Ordinary (Mr. \_\_\_\_\_, Clerk), under the Entail Acts and relative Acts of Sederunt (*or as the case may be*), for authority to charge the said entailed lands and estate with the sum of £ \_\_\_\_\_ sterling expended (*or intended to be expended*) by the petitioner on improvements of the nature contemplated by the said Acts; and being solemnly sworn and examined, depones that the annexed schedule which is signed by the deponent and the said Justice as relative hereto is correct; and further depones that to the best of his knowledge and belief there are no entailers' debts or other debts, and no provisions to husbands, widows, or children, affecting or that may be made to affect the fee of the said entailed lands and estate or the heirs of entail, other than those set forth in the said schedule, that are not secured by having been placed on the record.—All which is truth as the deponent shall answer to God.

(Signed) A.

( „ ) C, J.P.

[SCHEDULE

## SCHEDULE

REFERRED TO IN THE FOREGOING AFFIDAVIT.

AMOUNT.	DATE OF CONSTITUTION.	NAMES, DESIGNATIONS, AND RESIDENCES OF THE PARTIES NOW IN RIGHT.
£10,000 Entailer's Debt by Personal Bond.	12th March 1802.	The Scottish Widows Fund and Life Assurance Society, St. Andrew Square, Edinburgh.
£1000 a year Jointure, payable on death of A, restrictable to £500 in case of a second marriage, by Ante-nuptial Contract of Marriage.	13th June 1843.	Mrs. C K. or B, spouse of the said A, and residing in family with him at X foresaid.
£6000 provisions to younger children payable on death of said A, by said Ante-nuptial Contract of Marriage.	13th June 1843.	L, M, N, pupil children of the said A, and residing in family with him at X foresaid.

(Signed) A.  
( " ) C, J.P.

**8. Bond and Disposition in Security for Payment of Sums contained in Bond of Provision by a former Heir of Entail to his Younger Children, and granted by an Heir of Entail in Possession, over an Entailed Estate (11 & 12 Vict. c. 36, s. 21).**

I, A (*designation*), heir of entail in possession of the entailed lands and estate of X, in the County of Y, CONSIDERING that by Bond of Provision, dated (and, if recorded, specify register and date of recording), the deceased C (*designation*), heir of entail then in possession of the said entailed lands and estate, in virtue of the powers conferred on him by the Entail Provisions Act, 1824 (or, in virtue of the powers in the Deed of Entail, as the case may be, the narrative being in such case carefully taken from the deed, which will be recited), bound and obliged the heirs of entail succeeding to him in his said entailed

lands and estate to make payment out of the rents or proceeds thereof to his younger children—that is, to his children who should not succeed to him in the said entailed lands and estate—of the provisions following, viz., if there should be only one younger child, a sum equal to one year's free rent or value of the said entailed lands and estate, to be estimated in manner provided in the said Act; if two younger children, a sum equal to two years' such free rent or value; and if three or more younger children, a sum equal to three years' such free rent or value of the said lands and estate, and that at the expiration of one year from his death (*or as the case may be*), with the interest of the said provisions from and after the said term of payment, and thereafter during the not-payment of the same, as the said Bond of Provision in itself more fully bears; that on the day of \_\_\_\_\_, and in terms of the Entail Acts, I presented a petition to the Lords of Council and Session, \_\_\_\_\_ Division, Junior Lord Ordinary, Mr. \_\_\_\_\_, Clerk, setting forth that I was heir of entail in possession of the said entailed lands and estate, under and by virtue of the Deed (*or Deeds*) of Entail therein mentioned, and that I had completed a feudal title thereto conform to the writs specified therein (*or in the schedule appended thereto*); and also upon recital of the Bond of Provision thereinbefore narrated, setting forth that the said C died on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, when I succeeded to him in the said entailed lands and estate as his eldest son and nearest and lawful heir of tailzie and provision; and that the said C left in addition to me, three children, viz., D, E, and F (*designations*), and under the Bond of Provision before narrated, a sum equal to three years' free rent or value of the said entailed lands and estate became payable to the said D, E, and F, equally among them (*or otherwise, if the provision has been apportioned, the Deed of Apportionment being in that case narrated*); that the amount of the free rent or value of the said entailed lands and estate as at the date of my said father's death was £\_\_\_\_\_, conform to detailed statement of rental and deductions annexed to said petition, and that the principal sum payable to the said D, E, and F under the said Bond of Provision was £\_\_\_\_\_ sterling, and that in the shares and proportions before mentioned, being the amount of three years' free rent or value of the said lands and estate as so set forth; that the said sum of £\_\_\_\_\_, being the sum due under the Bond of Provision before narrated, was still wholly unpaid and that the sum of £\_\_\_\_\_, being one-third

part thereof, belonged and was due to the said D; that the sum of £ , being another third part of the said sum, belonged and was due to G, the only child and executor-dative *qua* nearest-of-kin decerned and confirmed to the said E, conform to decret-dative in favour of the said G, obtained on the                      day of                      before the Commissary of the Commissariat of                      , and testament-dative expedite thereon on the                      day of                      , in the inventory whereof the said sum is specially given up and confirmed; and that the sum of £                      , being the remaining third part of the said sum of £                      , now belongs to and is due to H (*designation*), who has acquired right thereto conform to assignation in his favour granted by the said F, dated                      (*the narrative will vary as before directed if the proportions are different, or if there has been a Deed of Apportionment*); and that I was desirous to avail myself of the provisions contained in the 21st section of the Entail Amendment Act, 1848, by which it is made lawful, in the circumstances therein set forth, for heirs of entail in possession to execute a Bond and Disposition in Security, or Bonds and Dispositions in Security, for such provisions over the entailed estate other than the mansion-house, offices, and policies thereof; and which petition prayed their Lordships, after intimation and service thereof, and after such inquiry into the facts of the case as to their Lordships might seem fit, and on being satisfied that the procedure thereunder was in conformity with the Statutes and relative Acts of Sederunt, to find that the detailed statement of rental and deductions thereto annexed was a correct statement, and that the utmost amount with which the said C could competently under the said Entail Provisions Act, 1824 (*or under the said Deed of Entail, as the case may be*), burden his heirs of entail on account of provisions in favour of the said D, E, and F was the sum of £                      sterling, or such other sum as their Lordships might find proper on inquiry as aforesaid, and to grant warrant to and authorise me to charge the fee and rents of the said entailed lands and estate of X, other than the mansion-house, offices, and policies thereof, with the foresaid sum of £                      , or such other sum as might be fixed by their Lordships, and to make and execute in favour of the said D, G, and H, as in right of said provisions, in the proportions foresaid, respectively, or to and in favour of such party or parties as should advance the said sum of £                      , or other sum as aforesaid, or any part thereof, a

Bond and Disposition in Security, or Bonds and Dispositions in Security, over the said entailed estate other than as aforesaid (*or as the case may be*, over certain portions of the said entailed lands and estate set forth in a schedule annexed to the said petition, and hereinafter described, the said portions including neither the mansion-house, offices, nor policies thereof) in ordinary form, and containing all clauses usual in Bonds and Dispositions in Security granted over estates in Scotland held in fee-simple, binding me and my heirs of entail in their order successively to make payment of the foresaid principal sum of £                      , or other sum as aforesaid, with interest and penalties, all as the prayer of said petition in itself more fully bears; that after intimation and service of the said petition had been duly made, the said Junior Lord Ordinary (*or Lord Ordinary on the Bills, as the case may be*) remitted, &c. (*here adapt the narrative from example given on p. 267, down to and including the interlocutor as shown on p. 268*): THEREFORE, in virtue of the Entail Acts, and as specially authorised as aforesaid, and without prejudice to the Bond of Provision before narrated, but in corroboration thereof, I do hereby BIND myself, and the heirs of entail who shall succeed me in the said entailed lands and estate of X, in their order successively, to make payment to the said D, G, and H, and their respective executors (*or heirs excluding executors*) or assignees whomsoever, of the foresaid principal sum of £                      sterling, and that in three equal shares or portions of £                      sterling to each of the said D, G, and H (*or in such other proportions as the case may be*), and their respective fore-saids, at the term of                      next, with a fifth part more of liquidate penalty in case of failure, and the interest of the said principal sum at the rate of                      per cent. per annum from the term of                      last, up to which the interest on the foresaid sum has already been paid and discharged, to the said term of payment, and half-yearly, termly, and proportionally thereafter, &c. (*in usual form, as shown on p. 236*): AND IN SECURITY of the personal obligation before written, I DISPONE to and in favour of the said D, G, and H respectively, and their respective fore-saids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, ALL AND WHOLE, &c. (*here describe or validly refer to a description of the entailed estate, or portions thereof intended to be charged, and specify or refer to real burdens, conditions, &c., if any, as before directed, p. 237; and if the description or reference includes the*

*whole estate, add—but excepting always herefrom the mansion-house, offices, and policies of the said entailed estate; if the description or reference includes only parts of the estate, and does not embrace the mansion-house, &c., add—and which parts and portions of the said entailed estate before conveyed in security do not include the mansion-house, offices, and policies thereof*); AND THAT IN REAL SECURITY to the said D, G, and H, and their foresaids, for their respective rights and interests as aforesaid, of the whole sums of money above written—principal, interest, and penalties: BUT always with and under the conditions and provisions contained in the Entail Acts relative to securities to be executed for sums of money granted by heirs of entail by way of provisions to younger children: AND I assign the rents: AND I assign the writs: AND I grant war-randice: AND I reserve power of redemption: AND I oblige myself and my heirs of entail foresaid for the expenses of assigning and discharging this security: AND on default in payment I grant power of sale: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

Should the bond be taken to other parties than the original holders, a discharge by the original holders must be obtained.

By the Entail Amendment Act, 1868 (31 & 32 Vict. c. 84, s. 8), the provisions of the Aberdeen Act are made applicable to all entails and trusts for the purpose of entailing; and the powers of the Aberdeen Act may be exercised by the person who, if the lands had been entailed in terms of the trust, would have been the heir in possession. The following is a form of a Bond of Annuity and Provision by an heir expectant in such a position. The provision made for wife and children by the bond may be made equally well in a contract of marriage.

**9. Bond of Annuity and Provision over Lands held in Trust to be Entailed by the Person who would be Heir in Possession if the Entail were Completed.**

I, A (*designation*), CONSIDERING that by Trust-Disposition and Settlement dated \_\_\_\_\_, and recorded \_\_\_\_\_, executed by the now deceased C (*designation*), my father, he, for the causes therein mentioned, disposed and conveyed to Y and Z (*designations*), and to such other persons as might be assumed by them, or by the trustees for the time acting under the said Trust-Disposition and Settlement,

and to the acceptors or acceptor, and survivors or survivor of them, ALL AND WHOLE the lands and estates therein and hereinafter particularly described (or referred to), and also all other estates and effects, heritable and moveable, then belonging, or which might thereafter belong to him, all as more particularly mentioned in the said Trust-Disposition and Settlement, but in trust only for the uses and purposes therein mentioned, and in particular that, after the fulfilment of certain prior purposes therein set forth, the said trustees should execute an entail of the said estates, or of such part or parts thereof as should then remain vested in them, in favour of me, the said A, and the heirs-male of my body, whom failing, to the other heirs therein specified as the said Trust-Disposition and Settlement, containing provisions and arrangements for the payments of the debts then affecting the said estates, and sundry other clauses and conditions, in itself more fully bears: AND FURTHER considering that the said C died on the                      day of                      , and the said Y and Z accepted of the trust created by the said Trust-Disposition and Settlement and entered upon the possession and management of the said trust-estate, and that I was then and am now the person who, if said lands and estate had then been or were now entailed, would be the heir or institute of entail in possession thereof: AND whereas by the Entail Provisions Act, 1824 (commonly known and hereinafter referred to as the "Aberdeen Act"), it is, *inter alia*, enacted that it shall and may be lawful to every heir of entail in possession of an entailed estate in Scotland, under the limitations and conditions therein mentioned, to provide and infest his wife in a liferent provision out of his entailed lands and estates by way of annuity: AND FURTHER, that it shall and may be lawful to the heir of entail in possession of any entailed estate in Scotland under the limitations and conditions mentioned in the said Act, to grant bonds of provision or obligations binding the succeeding heirs of entail in payment, out of the rents or proceeds of such estate, to the lawful child or children of the person granting such bonds or obligations who shall not succeed to such entailed estate, of such sum or sums of money, bearing interest from the grantor's death, as to him or her shall seem fit: AND whereas by "The Entail Amendment Act, 1868," it is, *inter alia*, enacted that from and after the passing of that Act the said Aberdeen Act shall be applicable to all entails, and also to all trusts, under which land is held for the purpose of being entailed, or by

*whole estate, add—but excepting always herefrom the mansion-house, offices, and policies of the said entailed estate; if the description or reference includes only parts of the estate, and does not embrace the mansion-house, &c., add—and which parts and portions of the said entailed estate before conveyed in security do not include the mansion-house, offices, and policies thereof); AND THAT IN REAL SECURITY to the said D, G, and H, and their foresaids, for their respective rights and interests as aforesaid, of the whole sums of money above written—principal, interest, and penalties: BUT always with and under the conditions and provisions contained in the Entail Acts relative to securities to be executed for sums of money granted by heirs of entail by way of provisions to younger children: AND I assign the rents: AND I assign the writs: AND I grant war-randice: AND I reserve power of redemption: AND I oblige myself and my heirs of entail foresaid for the expenses of assigning and discharging this security: AND on default in payment I grant power of sale: AND I consent to registration for preservation and execution.—*  
 IN WITNESS WHEREOF, &c.

Should the bond be taken to other parties than the original holders, a discharge by the original holders must be obtained.

By the Entail Amendment Act, 1868 (31 & 32 Vict. c. 84, s. 8), the provisions of the Aberdeen Act are made applicable to all entails and trusts for the purpose of entailing; and the powers of the Aberdeen Act may be exercised by the person who, if the lands had been entailed in terms of the trust, would have been the heir in possession. The following is a form of a Bond of Annuity and Provision by an heir expectant in such a position. The provision made for wife and children by the bond may be made equally well in a contract of marriage.

**9. Bond of Annuity and Provision over Lands held in Trust to be Entailed by the Person who would be Heir in Possession if the Entail were Completed.**

I, A (*designation*), CONSIDERING that by Trust-Disposition and Settlement dated \_\_\_\_\_, and recorded \_\_\_\_\_, executed by the now deceased C (*designation*), my father, he, for the causes therein mentioned, disposed and conveyed to Y and Z (*designations*), and to such other persons as might be assumed by them, or by the trustees for the time acting under the said Trust-Disposition and Settlement,

and to the acceptors or acceptor, and survivors or survivor of them, ALL AND WHOLE the lands and estates therein and hereinafter particularly described (*or* referred to), and also all other estates and effects, heritable and moveable, then belonging, or which might thereafter belong to him, all as more particularly mentioned in the said Trust-Disposition and Settlement, but in trust only for the uses and purposes therein mentioned, and in particular that, after the fulfilment of certain prior purposes therein set forth, the said trustees should execute an entail of the said estates, or of such part or parts thereof as should then remain vested in them, in favour of me, the said A, and the heirs-male of my body, whom failing, to the other heirs therein specified as the said Trust-Disposition and Settlement, containing provisions and arrangements for the payments of the debts then affecting the said estates, and sundry other clauses and conditions, in itself more fully bears: AND FURTHER considering that the said C died on the                      day of                      , and the said Y and Z accepted of the trust created by the said Trust-Disposition and Settlement and entered upon the possession and management of the said trust-estate, and that I was then and am now the person who, if said lands and estate had then been or were now entailed, would be the heir or institute of entail in possession thereof: AND whereas by the Entail Provisions Act, 1824 (commonly known and hereinafter referred to as the "Aberdeen Act"), it is, *inter alia*, enacted that it shall and may be lawful to every heir of entail in possession of an entailed estate in Scotland, under the limitations and conditions therein mentioned, to provide and infest his wife in a liferent provision out of his entailed lands and estates by way of annuity: AND FURTHER, that it shall and may be lawful to the heir of entail in possession of any entailed estate in Scotland under the limitations and conditions mentioned in the said Act, to grant bonds of provision or obligations binding the succeeding heirs of entail in payment, out of the rents or proceeds of such estate, to the lawful child or children of the person granting such bonds or obligations who shall not succeed to such entailed estate, of such sum or sums of money, bearing interest from the granter's death, as to him or her shall seem fit: AND whereas by "The Entail Amendment Act, 1868," it is, *inter alia*, enacted that from and after the passing of that Act the said Aberdeen Act shall be applicable to all entails, and also to all trusts, under which land is held for the purpose of being entailed, or by

which money or other property, real or personal, is invested in trust for the purpose of purchasing land to be entailed, and that the powers conferred by the said Aberdeen Act may be exercised with reference to such land, money, or other property, by the person who, if such land had been entailed in terms of the trust, would be the heir in possession of the entailed land, and by the person who, if such money or other property had been invested in the purchase of land to be entailed, would be the heir in possession under the entail to be executed of such purchased land, if such entail had been executed : AND whereas I, being the person who, if the entail of the said estates held by the trustees of my said deceased father had been executed, would be the heir or institute of entail in possession thereof, and thus entitled to grant such provisions in favour of my wife and children, am desirous to avail myself of the powers thus competent to me in manner after written : THEREFORE in terms of the foresaid statutes, and in the exercise of the powers thereby conferred upon me (*in the first place*), I do hereby BIND and OBLIGE the heirs of entail who may succeed to me in the said estates, to be entailed in pursuance of the directions contained in the said Trust-Disposition and Settlement, if an entail or entails thereof shall have been executed in my lifetime, to make payment to B, my wife, in case she shall survive me, during all the days of her lifetime after my death, of a free liferent annuity or jointure of £                      sterling per annum, to be restricted, in the event of her entering into a subsequent marriage, to an annuity of £                      sterling, from and after the date of said subsequent marriage (*if it is intended to give the maximum annuity allowed by the Acts, follow the form on p. 325*), and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms which shall happen after my decease, for the half-year following, and the next term's payment at                      following for the half-year succeeding, and so forth thereafter in advance during the lifetime of my said wife, with a fifth part more of each term's payment of the said annuity of penalty in case of failure in punctual payment of the same, and interest of the said sum at the rate of £5 per centum per annum from the respective terms of payment thereof until paid : AND I hereby PROVIDE and DISPONE to my said wife, in the event of her surviving me, the said free liferent annuity of £                      sterling, restrictable as aforesaid, to be uplifted by her during all the days of

her life after my death, at the terms, and with penalty and interest as before mentioned, furth of ALL AND WHOLE (*here describe or validly refer to the lands already held, and real burdens, conditions, &c., affecting the same, if any*), or furth of any part or portion thereof, and readiest rents, profits, and duties of the same: AND FURTHER, in case and in so far as the said directions contained in the said Trust-Disposition and Settlement shall not have been carried into effect at the time of my death, and the said estates or any part thereof, or any lands, money, or other property, real or personal, shall then remain vested in trust, and subject to the said directions for the settlement thereof under entail, or for the purpose of purchasing land to be entailed as aforesaid, I hereby PROVIDE and DECLARE that the said estates or part thereof, or lands, money, or other property then remaining vested in trust, shall be, and the same are hereby charged and burdened with the payment to my said wife, in the event of her surviving me, out of the income or annual proceeds thereof, of the said liferent annuity of £ , restrictable as aforesaid, but only in so far as the said annuity shall not be recovered by my said wife out of the said estates if entailed in my lifetime, in pursuance of the directions before referred to, or out of such part of the said estates as shall have been so entailed in my lifetime, and to the effect of making up to her the full annuity of £ , restrictable as aforesaid, with penalty and interest, as before mentioned; and accordingly I hereby direct and appoint, and BIND and OBLIGE the said trustees or other person or persons acting for the time in the execution of the trust created by the said Trust-Disposition and Settlement, and I also BIND and OBLIGE the person or persons who may be entitled for the time to the income or annual proceeds of the said trust-estates and money or other property, and also the institute and heirs of entail who may acquire right to the said lands and estates upon the directions before referred to being carried into effect in whole or in part by the execution of an entail or entails after my death, to make payment to my said wife, in the event of her surviving me, of the said liferent annuity of £ sterling, restrictable as aforesaid, with penalty and interest as aforesaid, and that to the extent and effect before mentioned—my meaning and intention being to provide to my said wife an annuity or jointure of £ , restrictable as aforesaid, payable out of the said estates so far as entailed in my lifetime, and out of the income or annual proceeds of the said estates so far as not

entailed, and lands, money, and other property held, or that may be held, in trust by the said trustees and their successors in the said trust, or out of any part or portion of the said estates or lands, money, or other property, or of the income or annual proceeds thereof, whether the said estates or other lands, or any part or parts thereof, shall be entailed or still held in trust at my death, or the said trust money or other property shall or shall not have then been invested in land, and the land entailed in pursuance of the directions before referred to: AND which liferent, annuity, or provision to my said wife, shall be subject to the whole conditions applicable thereto, and contained in the said statutes: AND particularly declaring that in case the said annuity shall be found to exceed the amount of the annuity which, in virtue of the statutes before mentioned, I am entitled to grant to my said wife out of the said estates, the same shall be subject to restriction to the extent of the excess, in the manner provided in the said Aberdeen Act: AND (*in the second place*) I hereby BIND and OBLIGE the heirs of entail, succeeding to me in the said estates to be entailed in pursuance of the directions contained in the said Trust-Disposition and Settlement, if an entail or entails in pursuance thereof shall have been executed during my lifetime, to make payment out of the rents and proceeds of the said estates to each of my children born or to be born, other than the heir entitled to succeed at my death to the said estates, and to the representatives of each such child predeceasing me who may be entitled to claim, as representing such child, in virtue of any settlement to be made with my consent in any contract to be executed in consideration of the marriage of such child, and to the lawful issue of each such child predeceasing me, claiming under the provisions of the "Entail Acts," of such sum or provision as shall be equal to, and shall not exceed, the amount of the provision which in such a case I am entitled, under the Acts before referred to, to grant to my said children: THAT IS TO SAY, for one such child, a sum equal to and not exceeding one year's free rent or value of the said entailed estate, to be computed in the manner mentioned in the said Aberdeen Act; for two such children, a sum equal to and not exceeding two years' free rent or value; and for three or more such children, a sum equal to, and not exceeding, three years' free rent or value, as the same shall be at the time of my death; and which sum or provision shall be payable upon the expiration of one year from my death, with interest thereof at the rate of five per

centum per annum from and after the day of my death till paid: DECLARING ALWAYS that the said provision is granted by me under all the conditions applicable to such provisions which are contained in the Entail Acts: AND FURTHER, in case and in so far as the said directions contained in the said Trust-Disposition and Settlement shall not have been carried into effect at the time of my death, and the said estates, or any parts thereof, or any lands, money, or other property, real or personal, shall then remain vested in trust, and subject to the said directions for the settlement thereof under entail, or for the purchase of land to be entailed, I hereby provide and declare that the said estates or land, money, or other property then remaining vested in trust, shall be, and the same are hereby charged and burdened with the payment to my said children, or their representatives, or issue entitled to claim as aforesaid, of a provision of such and the like amount and extent as I would have been entitled to grant them out of the entailed lands and estates, if the lands so held in trust had been entailed, and any trust money or other property held in trust had been invested in land and the land entailed, and that over and above the provision hereinbefore granted to my said children, or their representatives, or issue entitled to claim as aforesaid, out of any lands which may have been entailed in my lifetime, in pursuance of the directions before referred to: AND accordingly I hereby DIRECT and APPOINT, and BIND and OBLIGE, the said trustees, and I also BIND and OBLIGE the person or persons who may be entitled for the time to the income of the said trust-estates and money or other property, and also the institute or heir of entail who may acquire right to the entailed lands and estate, upon the directions before referred to being carried into effect, in whole or in part by the execution of an entail or entails after my death, to make payment to my said children, or their representatives or issue entitled to claim as aforesaid, of such a sum as shall be equal to, and shall not exceed, the provisions which I would have been entitled to grant in such a case out of the entailed lands and estates, or rents thereof, if the lands so invested in trust had been entailed in my lifetime, or otherwise of the largest sum or provision with which I am or shall be entitled to charge the said trust-estates, money, and property, or the income or annual produce thereof, or for which I am entitled to bind the parties beneficially interested therein as a provision for my said children or their representatives or issue, in terms of the statutes

“ and twenty pounds, for the purpose of endowing or contributing to  
 “ the endowment of such new parish as aforesaid; and also to burden  
 “ such lands and estate or give security over the same for upholding  
 “ in due repair the fabric of the church of such new parish, and the  
 “ dwelling-house and offices of the minister, or any of them; the sums  
 “ to be expended in such repairs not exceeding in any one year one  
 “ pound per centum on the amount of money originally expended in  
 “ building or purchasing and completing such church, or upon the  
 “ estimated value thereof when received and recognised as the church  
 “ of such new parish, and one pound per centum on the amount of  
 “ money originally expended in building or purchasing and completing  
 “ such dwelling-house and offices, or upon the estimated value thereof,”  
 under certain conditions therein mentioned: AND FURTHER CONSIDER-  
 ING that, with the view of making application to the said Lords of  
 Council and Session, as Commissioners foresaid, for disjunction and  
 erection of a church and district into a parish church and parish  
*quoad sacra*, in terms of the foresaid Act, a church and dwelling-house  
 or manse and offices and appurtenances have been built on a piece of  
 ground lying in the parish of Y and County of Z; that the persons in  
 right of the said church and dwelling-house or manse and offices and  
 appurtenances have consented that the said church shall be inalien-  
 ably secured as the church of the proposed new parish in connection  
 with the Church of Scotland, and the said dwelling-house or manse  
 and offices and appurtenances as the dwelling-house or manse and  
 offices and appurtenances for the minister of the said new parish;  
 and that I and certain other persons have agreed to contribute a sum  
 of money annually for the purpose of providing and securing a stipend  
 of one hundred pounds yearly for the minister, and making due  
 provision for the future maintenance of the fabrics of the said church  
 and dwelling-house and manse and offices and appurtenances: AND  
 FURTHER CONSIDERING that, preparatory to making the said application  
 to the said Lords of Council and Session, as Commissioners foresaid,  
 and with the view of more efficiently carrying out, *inter alia*, the fore-  
 said purposes, the persons before referred to who have right to the  
 said church and others, and I and the other persons before referred  
 to who have contributed the endowment and provision above men-  
 tioned, have applied for and obtained from the General Assembly of  
 the Church of Scotland a Deed of Constitution bearing date the  
 day of , by which it is, *inter alia*, enacted

that certain persons therein nominated and appointed should be trustees for the purposes in the said Deed of Constitution, and partly herein narrated; and that the persons therein mentioned who had agreed to contribute annually for the endowment of the said church and parish, and for the maintenance of the fabrics of the said church, and of the said dwelling-house or manse and offices and appurtenances, and who are named in said Deed of Constitution, should grant a bond or bonds in favour of the said trustees therein specified, binding themselves and their representatives to make payment to the said trustees, and the survivors or survivor of them, and their successors in office, at the term of                      yearly (*or at the terms of Whitsunday and Martinmas in each year, by equal portions, as may be desired*), of the sums of money which they had respectively agreed to contribute annually for the purposes therein mentioned; and that in security of the said payments they should further grant in favour of the said trustees and their foresaids Heritable Bonds and Dispositions in Security, one or more, conveying such amount of heritable property as should be sufficient to yield the yearly sums covenanted to be paid as therein mentioned, or invest in the public funds, in the names of any three of the trustees appointed by or in virtue of the foresaid Deed of Constitution, such principal sum as should be sufficient to yield the annual amount of the payments to be made by the said persons respectively under the conditions therein mentioned: AND that in virtue of the power conferred on me as heir of entail in possession of the said lands and estate of X, I have resolved to burden said lands and estate with the annual payment of the sums which I agreed to contribute annually for the purposes aforesaid, and which are less (*or not greater, as the case may be*) than the sums with which I am entitled by the said Act to burden the said lands and estate for said purposes: THEREFORE, in virtue of the powers conferred upon me as heir of entail aforesaid, I DO hereby BIND myself, and the heirs succeeding to me in the said entailed lands and estate of X, to make payment to M, N, and O (*designations*), and the survivors or survivor of them, and to their successors in office, as trustees foresaid, of the sum of £                      sterling yearly, (*a*) in trust for payment of the amount of the foresaid sum of £                      agreed to be contributed by me as aforesaid towards providing and securing the

(a) The stipend granted by an heir of entail can in no case exceed 3 per cent. of the clear rental of the land conveyed in security, nor be more than £120.

foresaid stipend or endowment for the minister for the time being of the foresaid *quoad sacra* church and parish; AS ALSO of the FURTHER SUM OF £                      sterling (a) yearly, or such part thereof as the said trustees shall certify by a writing under their hand to be necessary, for the purpose of maintaining and repairing the fabrics of the said church and dwelling-house or manse and offices and appurtenances; which respective sums hereby due shall be payable half-yearly, at Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms that shall happen after the erection of the said new parish of                      , and after the settlement of a minister to serve the cure thereof, for the term then ended (*or as the case may be*), and so forth half-yearly thereafter in all time coming, all as more particularly mentioned in the said Deed of Constitution; but always under the express provision and declaration that the said trustees and their foresaids shall be bound to repay to me and my foresaids, out of the proceeds arising from rents of seats or sittings in the said church, such sums as are applicable towards relief of my personal obligation before written, in manner provided in the Deed of Constitution before mentioned, and under the limitations and conditions therein contained: AND IN SECURITY of the personal obligation before written I hereby DISPONE to and in favour of the said M, N, and O, and the survivors and survivor of them, and their successors in office, as trustees foresaid, ALL AND WHOLE (*here describe or validly refer to the lands*), lying in the parish of Y                      and County of Z                      (and which lands lie within the district to be marked out and designated as aforesaid); AND THAT IN REAL SECURITY to the said persons and their foresaids as trustees aforesaid, and for the purposes foresaid, of the several sums before mentioned due and payable by me as aforesaid: AND I assign the rents, but only in so far as necessary to satisfy the said several sums as the same become due: AND I assign the writs, but only in so far as necessary to support the right hereby granted: AND I grant warrandice: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

Lands held under strict entail are made available in conjunction with policies of insurance on the life of the heir in possession as securities for loans, the sum in the policy payable on the borrower's death forms the

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(a) The sum granted for repairs can in no case exceed 1 per cent. of the original cost of the particular building on which it is proposed to expend it.

security for repayment of the principal sum lent, while the borrower's right to the entailed estate and rents thereof form the security for the interest and premiums of insurance payable during his life. We give below the form of deed used in such cases :—

**11. Bond and Assignation and Disposition in Security** *containing Assignation to Policy of Insurance on Borrower's Life and Conveyance of Borrower's Interest in Entailed Lands in Security.*

I, A (*designation*) (*here will follow an obligation for repayment of the principal sum lent, and payment of interest and penalties in ordinary form, as on p. 236*): AS ALSO, I BIND myself and my foresaids to pay or cause to be paid to the (*here specify the insurance company or society*), at the head office of the said company (*or society*) in Edinburgh (*or wherever the office may be situated*), on or before the                      day of (*here specify the day when the premium of insurance is payable*), yearly, during my life, or so long as the sums before specified, or any part or portion thereof, shall remain unpaid, the annual contribution or premium of £                      sterling, payable to the said company in terms of the policy of insurance on my life hereinafter assigned, granted by the said company, and also such extra or additional premium or premiums, if any, as may for the time be required under the regulations of said company for keeping the said policy in force: AND I BIND myself annually to report to the said B or his foresaids discharges of the foresaid premiums within ten days after the same respectively shall fall due; and also, in case through any accident or neglect the said premiums, or any part thereof, shall happen to lie unpaid, whereby theforesaid policy shall become void and expire in whole or in part, then I BIND myself and my foresaids to renew the said policy, or to effect a new policy or policies of insurance upon my life in place thereof for the like sum of £                      , or any portion of the said sum as to which the said policy hereinafter assigned shall have become void, in such office or offices as may be approved of by the said B or his foresaids, and to pay the whole original or additional premiums to become due upon such renewed or new policy or policies in such way and manner as is hereinbefore provided with regard to the premiums payable, or that may become payable, on the foresaid policy at present effected on my life, and hereinafter assigned: AND FURTHER, in case the said B or his foresaids shall at any time make payment of the said annual or additional premiums of insurance,

or any part thereof, or in case they shall, in the event of the said policy, or any renewed or new policy of insurance that may be effected on my life as aforesaid, becoming void and expiring in whole or in part as aforesaid, be at the expense of obtaining a renewed or new policy or policies in place thereof, or of paying the annual or additional premiums thereon, all which they are hereby authorised and empowered to do whenever they think fit, then I BIND myself and my foresaids on demand to repay to the said B or his foresaids the amount of the premiums so paid by them, with the interest thereof at the rate of £5 per centum per annum from and after the date or dates of advancing the same, and whole costs, charges, and expenses incurred in making payment thereof, or in obtaining the renewed or new policy or policies in the event foresaid, and which renewed or new policy or policies of insurance shall be effected at my expense, and in the name of, or shall be assigned by me to, the said B and his foresaids, in like manner and to the same effect as the policy of insurance hereinafter assigned: MOREOVER, in further consideration of the foresaid loan, and in addition to the payments hereinbefore stipulated to be made by me, I BIND myself and my foresaids to pay to the said B or his foresaids, at the term of                      yearly during my life, or whilst the sums hereby due, or any part or portion thereof, shall remain unpaid, the sum of £                      sterling, beginning the first year's payment of the said sum of £                      at the term of next, and so forth yearly thereafter at that term during my life, or whilst the sums hereby due, or any part or portion thereof, shall remain unpaid: BUT DECLARING that the said additional yearly sum of £                      shall be received and applied by the said B or his foresaids only towards payment of additional premiums of insurance, and loss and damage to become due in any of the events before mentioned with reference to the foresaid loan, with the interest thereon at the rate of £5 per centum per annum from the time when the same shall become due till paid, and of the expenses to be incurred in the recovery of the said yearly sum itself; and in case and so far as the said B or his foresaids shall receive the said additional yearly sum of £                      sterling, they shall be bound to account to me or my foresaids for the surplus, if any, in their hands, after satisfying the purposes foresaid, according as the same shall be instructed by a statement under their hand, without the necessity of any further voucher: RESERVING nevertheless to the said B and his foresaids full recourse against me and

my foresaids, under the personal obligation hereinbefore contained, for any further sum to become due in respect of premiums, or loss and damage as aforesaid, exceeding the said additional yearly sum of £

: AND IN SECURITY to the said B and his foresaids of the several personal obligations and stipulations before written (IN THE FIRST PLACE) I hereby ASSIGN, CONVEY, and MAKE OVER to the said B, and his heirs and assignees whomsoever, the foresaid policy of insurance on my life for the sum of £                      sterling, which is dated the                      day of                      , class                      , No.                      ,

and granted by the said company (*or society*) in my favour, together with the said sum of £                      sterling thereby due, and also all claims, benefits, bonuses, or advantages already declared or accruing, or which may be hereafter declared or may accrue on the said policy of insurance in any manner of way; with full power to my assignees and their foresaids to uplift and receive the sums which may thereby become due, and to discharge or assign and convey the same, and power to sell by public roup or private bargain to any third party or parties, or surrender the said policy of insurance and any renewed or new policy or policies of insurance that may be effected on my life in virtue of the provisions hereinbefore written, and all or any benefit under the same, and that at the value or values put upon the same, or the price or prices offered for the same by the said company (*or society*), or any third party, as the case may be, the company (*or society*) or the purchaser, or other persons dealing with my said assignees or their foresaids, having no concern with the application of the price, but being sufficiently exonerated and secured by the discharges, surrenders, conveyances, assignations, or other writings to be granted by my said assignees or their foresaids in the premises; and generally with full power to my said assignees and their foresaids to do everything in the premises which I could have done myself before granting hereof: DECLARING ALWAYS that in case during my life the said B or his foresaids shall receive payment of the foresaid sum of £                      , interest, penalties if incurred, and whole other sums due to them under these presents, they shall be bound and obliged at my expense to reassign to me or my foresaids the foresaid policy of insurance hereby assigned, if the same is in subsistence at the time, or to assign and convey to me any renewed or new policy or policies of insurance that may have been obtained as aforesaid: AND ALSO DECLARING that in case upon my death the said B or his foresaids

shall receive payment of the sums due under the foresaid policy, or under any renewed or new policy or policies that may be effected on my life as aforesaid, they shall be bound to hold just count and reckoning with my heirs and representatives or assignees for whatever sums they may so receive, and after full payment of the foresaid sum of \_\_\_\_\_, with the interest thereof and penalties before stipulated in case of failure, if incurred, and of the whole other sums due to them under these presents, to pay over to my heirs or assignees any balance that may remain in their hands of the sums so received by them: AND (IN THE SECOND PLACE) I hereby DISPONE to and in favour of the said B and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, but always with and under the special declaration hereinafter written, ALL AND WHOLE, &c. (*here describe or validly refer to the subjects to be conveyed in security, and real burdens, conditions, &c., if any, other than those of the entail in manner directed on p. 236*); AND THAT IN REAL SECURITY to the said B and his foresaids of the whole sums of money above written—principal, interest, and penalties—and of the fulfilment of the several personal obligations and stipulations before written: BUT whereas I hold the lands before disposed by virtue of a Deed (*or* Deeds) of Entail containing prohibitions and restrictions against alienating and encumbering the same to the prejudice of the subsequent heirs of tailzie, THEREFORE it is hereby DECLARED by me, and the said B by acceptance hereof AGREES for himself and his foresaids, that neither these presents nor any adjudication or other process, diligence, or execution to follow hereon shall affect the said lands, or any part or portion thereof, or the rents, maills, and duties thereof, in any way or to any extent inconsistent with the said Deed of Entail, nor shall the same operate to infringe the right of any person or persons who shall succeed or become entitled to succeed to me as heir or heirs of tailzie in the said lands, except in so far as may be consistent with the said Deed of Entail; but the real security hereby constituted, and the assignation under written to rents, maills, and duties, and all process, diligence, and execution following upon the same, or upon the personal obligations hereinbefore written, or any of them, shall, in so far as the same may be inconsistent with the said Deed of Entail, be null and void as against the said lands, and the heirs of entail succeeding thereto, and the rents thereof, and shall be no further binding against the said

lands than is consistent with the said Deed of Entail of the said lands, so that no irritancy may be incurred by my granting this Disposition in Security, or by any process, diligence, or execution which may follow hereon: BUT without prejudice to the effect of these presents in all other respects, and to the full and unqualified right of the said B or his foreshaids to recover the whole sums of money that shall be due in terms hereof out of any separate estate or funds, heritable or moveable, belonging to me: (a) AND I assign the rents, but only in so far as consistent with said Deed of Entail: AND I assign the writs, but only in so far as consistent with said Deed of Entail: AND I grant warrandice: AND I reserve power of redemption: AND I oblige myself for the expense of assigning and discharging this security: AND on default of payment I grant power of sale, but only to the extent of my own right and interest in the foreshaid lands, and of my own power to sell the same, and nowise to any extent or effect inconsistent with the said Deed of Entail, and under the conditions and restrictions above written, and not otherwise: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

## 12. Post Obit Bond by Heir-Apparent of Entail.

In a Post Obit Bond the heir-apparent, in consideration of a sum down, conveys the estate in security of a larger sum repayable on his succession. The sum to be repaid is, as a rule, calculated to cover at least the sum advanced with compound interest, and the premiums with compound interest on an insurance to be effected by the lender on the borrower's life, payable to the lender, in the event of the borrower's death, before his succession to the estate by the death of the heir in possession.

I, A (*designation*), eldest son and heir-apparent of B (*designation*), heir of entail in possession of the lands and estate after described and disposed, and as such entitled to succeed to the said lands and estate upon the death of the said B, CONSIDERING that it has been arranged and agreed with the \_\_\_\_\_ Company that they should make payment to me of the sum of £ \_\_\_\_\_ sterling, on condition of my granting these presents in manner under written: THEREFORE I, the said A, in consideration of the said sum of £ \_\_\_\_\_, instantly paid

(a) Forms of clauses for establishing *pari passu* preferences in cases of several securities of the above nature being granted can be readily adapted from those applicable to ordinary Bonds and Dispositions in Security already given.

to me by the said company, of which I hereby acknowledge the receipt, do hereby BIND and OBLIGE myself, my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to make payment to the said Company and their assignees whomsoever (*state place of payment*), of the sum of £ (sum to be repaid) sterling, and that upon the death of the said B, provided I shall survive the said B, and thus succeed to the said lands and estate as heir of entail next in succession to the said B, which sum shall be payable to the said Company, or their foresaids, free of all burdens and deductions whatsoever, with a fifth part more of liquidate penalty in case of failure, and the interest of the said sum of £ , at the rate of per centum per annum from the said date of payment during the not-payment thereof, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first term of Whitsunday or Martinmas following, and so forth half-yearly, termly, and proportionally thereafter during the not-payment of the said principal sum, with a fifth part more of the interest due at each term of liquidate penalty in case of failure in the punctual payment thereof: AND in security to the said Company and their foresaids of the payment of the said sum of £ , penalty, if incurred, and interest as aforesaid, I, the said A, for all interest competent to me as heir of entail foresaid, as if I had already succeeded to and were duly infeft in said lands and estate, and then as now, and now as then, do hereby dispoise to and in favour of the said Company and their foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, but always with and under the provisions and declarations hereinafter written, ALL AND WHOLE (*describe or refer to subjects*), together with my whole right, title, and interest, present and future, in and to the said lands and estate before described and disposed: AND that in real security to the said Company and their foresaids of the sum of £ , with interest and penalties above written: BUT whereas the said lands and estate are destined to me by virtue of a Deed of Entail containing prohibitions and restrictions against alienating and encumbering the same, to the prejudice of the subsequent heirs of entail, or clauses importing such prohibitions and restrictions, THEREFORE it is hereby declared by me, and the said company by acceptance hereof agree for themselves and their fore-

said, that neither these presents nor any adjudication or other process, diligence, or execution to follow hereon, shall affect the said lands and estate, or any part or portion thereof, or the rents, mails, and duties thereof, in any way or to any extent or effect inconsistent with the said Deed of Entail, nor shall the same operate to infringe the right of any person or persons who shall succeed or become entitled to succeed as heir or heirs of entail to the said lands and estate, except in so far as may be consistent with the said Deed of Entail, but the real security hereby constituted, and the assignation of rents under written, and all process, diligence, and execution following upon the same or upon the personal obligation before written, shall, in so far as the same may be inconsistent with the said Deed of Entail, be null and void as against the said lands and estate, and the heirs of entail succeeding thereto, and the rents thereof, and shall be no further binding against the said lands and estate, or the rents thereof, than is consistent with the said Deed of Entail, so that no irritancy may be incurred by my granting this Disposition in Security, or by any process, diligence, or execution which may follow hereon; but without prejudice to these presents in all other respects, and to the full and unqualified right of the said Company or their foresaids to recover the whole sums of money that shall be due in terms hereof, out of any separate estate or funds, heritable or moveable, belonging to me; and I assign the rents, but only in so far as consistent with the said Deed of Entail; and I assign the writs, but only in so far as consistent with the said Deed of Entail: AND I grant warrandice: AND I reserve power of redemption: AND I oblige myself for the expenses of assigning and discharging this security, and any additional or corroborative security or securities hereafter to be granted by me, and also for the charges and expenses of the whole writs and securities undertaken to be granted by me as after mentioned, including the expenses of making up and completing titles in my favour to the said lands and estate, either at the instance of the said Company or myself, and any other expenses which the said Company shall incur in exercise of the powers hereby conferred upon them; and on default in payment of the sums, principal, interest, penalties, and others hereinbefore and after written, I grant power of sale, but only to the extent of my own right and interest in the said lands and estate, and of my own power to sell the same, and no wise to any extent or effect inconsistent with the

said Deed of Entail, and under the conditions and restrictions above written, and not otherwise: AND FURTHER, I, the said A, BIND and OBLIGE myself, at my own proper charges and expense, to procure myself duly and lawfully served and retoured and seised in the said lands and estate as soon as the succession thereto shall open to me; and to enable the said

Company and their foresaids to complete such feudal titles in my person to the said lands and estate, I do hereby constitute , the manager of the said

Company; whom failing , the secretary of the said Company; whom failing, the manager or secretary of the said

Company for the time, my lawful and irrevocable procurator and commissioner, for me and in my name to procure me, at my own charges, infeft and seised in the said lands and estate immediately on the succession opening to me: AND the said infeftment being so expedite and completed, the same shall accresce and accrue to these presents, and infeftment following thereon, and render the same as effectual to all intents and purposes as if the succession had already opened and my title thereto had been duly and validly completed before the granting hereof: AND for that purpose I do hereby authorise and empower my said procurator and commissioner to sign, present, and give in for me and in my name a petition or petitions to the Sheriff of Chancery to procure me decerned and served as heir of entail to the said lands and estate, or otherwise in any other character in which I may be entitled to succeed thereto, and to take out, procure, and obtain all decrees of service, writs of *clare constat*, charters or infeftments which may be required for completing my title to the said lands and estate as heir of entail, or otherwise as foresaid, in the same manner and as amply in all respects as I could do myself, ratifying hereby and confirming whatever my said procurator and commissioner shall lawfully do or cause to be done in the premises in virtue hereof: AND FURTHER, I BIND and OBLIGE myself to grant, execute, and deliver at my own expense, all deeds, conveyances, and other writings that may be deemed necessary for fully and effectually vesting the said lands and estate in the person of the said

Company in real security, and for payment as before mentioned, containing all usual and necessary clauses for that purpose, and particularly upon my title being completed as aforesaid, and the foresaid sums of money remaining unpaid, I BIND and OBLIGE myself, whenever required, to grant and deliver to and in favour of the said

Company or their foresaids, a valid and sufficient bond of corroboration of these presents, with a new disposition in ordinary form of the said lands and estate in security, and for payment of the whole sums of money herein contained—principal, interest, and penalties: AND FURTHER, and without prejudice in any way to the assignation hereinafter written, I, the said A, BIND and OBLIGE myself not to give any consent to the said entailed lands and estate being disentailed, or to any money being borrowed upon the security thereof, or to their being charged or burdened in any way whatever during the lifetime of the said B, unless I shall have previously received the express approval and concurrence in writing of the said

Company, or their foresaids, to my giving such consent: AND if, notwithstanding the terms of this obligation, I shall at any time give my consent to a disentail of the said lands and estate, or to charging or encumbering the same with debt in any way whatsoever, without having received the previous approval and concurrence in writing of the said

Company or their foresaids I do hereby specially CONSENT, AGREE, and DECLARE that the said principal sum of £

shall, notwithstanding anything herein contained, be and become exigible from, and payable by me, and the said

Company and their foresaids, shall immediately thereupon be entitled to use and follow forth all diligence competent to them under these presents as if the term of payment of the said principal sum of £

were already past and bygone:

AND FURTHER, in the event of my succeeding to the said entailed lands and estate, and in respect that I was born subsequent to the date of the said Deed of Entail, and will therefore be entitled to acquire the said lands and estate in fee-simple, I do hereby BIND and OBLIGE myself, within three months after the succession shall have opened to me, to present and carry through a petition to the Court of Session for authority to record an instrument of disentail of the said lands and estate, and thereafter, upon obtaining the authority of the Court, to execute and record in proper form an instrument of disentail of the said lands and estate, or to take such other steps as may be necessary for having the said lands and estate freed and disencumbered from the fetters of the entail thereof, and to enable me to acquire the same in fee-simple: AND FURTHER, I BIND and OBLIGE myself, my heirs, executors, and successors, immediately upon acquiring the said lands and estate in fee-simple, by the pro-

cedure before mentioned, to GRANT, EXECUTE, and DELIVER to and in favour of the said Company and their foresaids, a Bond of Corroboration and Disposition in Security in ordinary form, and all other appropriate deeds and writings, containing all usual and necessary clauses which may be required for fully and effectually vesting the said lands and estates in the person of the said Company or their foresaids, in security, and for payment at the date hereinbefore mentioned of the principal sum, interest, and penalties herein contained, and for rendering the said lands and estate,<sup>(a)</sup> and the persons succeeding to me therein liable for payment of the said principal sum, interest, and penalties: AND FURTHER, I do hereby specially CONSENT and AGREE that the said Company and their foresaids shall be entitled, upon the execution by me of these presents, to raise, execute, and use letters of inhibition against me in common form upon the personal obligations herein contained, and duly to record the same in the Register of Inhibitions and Adjudications, and that at such time or times as the said Company or their foresaids may think proper, notwithstanding the term of payment of the sums of money hereby contracted to be paid may not have arrived, which is hereby declared shall form no objection to the use of such inhibition: AND FURTHER, I BIND and OBLIGE myself and my foresaids, so long as the foresaid principal sum of £ , interest, and penalties, or any part thereof, shall remain unpaid, to take no steps and make no application to the Court of Session or other Court, for having the said letters of inhibition recalled or set aside, but the same shall, subject to the provisions of the statutes affecting the same, remain in full force and effect until the whole of the said sums—principal, interest, and penalties—shall be fully paid and discharged: AND now, seeing that it was a condition of the said advance being made to me that the assignation under written should be granted, THEREFORE I, the said A, for further security and more sure payment of the sums herein contained, assign, transfer, convey, and make over from me, my heirs, executors, and assignees, to and in favour of the said Company and their foresaids, all or any sum or sums of money, or other consideration of whatever kind, which may be payable to me, or which I may have right to or be entitled to receive from the said B as heir of entail in possession of the said lands

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(a) Titles to Land Consolidation (Scotland) Act, 1868, s. 157.

and estate, or from any other party or parties whomsoever, or which may be consigned in bank, or the payment of which may be secured to me in terms of the Entail Acts, in respect of any application under these Acts to which my consent may be required, and that whether such sum or sums of money or other consideration shall be payable, consigned, or secured in respect of any consent which may be given or agreed to be given by me, or in respect of such consent being dispensed with in terms of the provisions of the Entail Acts, together with all interest accruing upon such sum or sums or other consideration foresaid: SURROGATING hereby and substituting the said Company and their foresaids in my full right and place in the premises, with full power, warrant, and authority to the said Company or their foresaids, for me and in my or their own name, to uplift, sue for, and receive the said sum or sums of money hereby assigned; to grant all acquittances and discharges therefor, or other deeds or writings incident thereto, which shall be as valid and sufficient to the receivers thereof as if granted by me, and generally to do everything in the premises as fully in all respects as I could have done myself before the granting hereof: RATIFYING hereby and Confirming whatever my said assignees shall do or cause to be done under this present assignation: AND upon such sum or sums being received by my said assignees, they shall apply the same towards payment in whole or in part of the whole sums of money due under these presents, principal, interest, and penalties, and whole costs, charges, and expenses incurred by them in the premises, and thereafter account to me or my foresaids for any balance which may remain in the hands of my said assignees, as the same shall be vouched and instructed by an account under their hands without the necessity of any other voucher; which assignation above written I BIND and OBLIGE myself and my foresaids to warrant from all facts and deeds done or to be done by me in prejudice thereof: DECLARING ALWAYS that the foresaid assignation is granted by me in security and for more sure payment of the foresaid principal sum, interest, and penalties; and that on payment thereof, and of all costs, charges, and expenses incurred by my assignees in the premises, my said assignees shall be bound to retrocess me, but always at my expense, in and to the right to the whole sum or sums of money contained in the foregoing assignation: AND I consent to registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

The bond is recorded in the Sasine Register, and is set up by accretion on the completion of the borrower's title after his succession to the estate. It has also to be intimated to the heir in possession, so as to give the lender a preference in terms of the Entail (Scotland) Act, 1882, s. 13, over the value of the borrower's expectancy in the event of any application, to which the borrower's consent is necessary, being made under the Entail Acts.

**13. Bond by Heir-Apparent of Entail, and Assignment of Expectancy, and Life Insurance Policy in Security.**

I, A (*designation*), eldest son of B (*designation*), heir of entail in possession of the lands and estate after described and disposed, and as such entitled to succeed to the said B in the said lands and estate upon the death of the said B, CONSIDERING that it has been arranged and agreed with C (*designation*), that he should make payment to me of the sum of £                      sterling, on condition of my granting these presents in manner under written: THEREFORE I, the said A, grant me to have instantly borrowed and received from the said C the said sum of £                      sterling, which sum (*complete personal obligation in ordinary form, but in place of ordinary penalty clause for failure in punctual payment of interest, say—*AND FURTHER, in the event of any half-yearly payment of interest not being punctually paid, the same shall accumulate by way of compound interest at the said rate, with half-yearly rests at Whitsunday and Martinmas in each year: AND I BIND myself and my foresaids to pay such accumulated amount): AND FURTHER, so long as the sums due and to become due under these presents, or any part thereof, shall remain unpaid, I BIND myself and my foresaids, &c. (*take in obligation to pay sum to meet annual premiums of insurance from Bond and Disposition and Assignment in Security by heir of entail, p.* ): AND in security of the obligations hereinbefore and hereinafter undertaken (*in the first place*) I, the said A, for all interest competent to me as heir of entail foresaid, and as if I had already succeeded to and were duly infeft in the said lands and estate, and then as now, and now as then, do hereby dispoise to and in favour of the said C and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof; but always with and under the provisions and declarations after written, ALL AND WHOLE (*describe or refer to subjects*), together with

my whole right, title, and interest, present and future, in and to the said lands and estate before described and disposed: AND that in real security to the said C and his foresaids of the whole sums—principal, interest, compound interest, penalties, and premiums of insurance and expenses—before written: BUT whereas (*take in clauses from the preceding style*)—(1) Clauses protecting entail; (2) assignation of rents; (3) assignation of writs; (4) clause of warrandice; (5) obligation for expenses; (6) power of sale; (7) clauses as to completion of title and granting of further security; (8) obligation not to consent to disentail by heir in possession; (9) (*where suitable*) obligation to disentail on succession opening, and to grant corroborative security; (10) consent to use of inhibition): AND whereas it was a condition of the said advance being made to me that I should grant the assignation under written, THEREFORE (*in the second place*) I, the said A, for further security (*take in from preceding style assignation of any sums of money payable to granter in respect of applications under the Entail Acts*): AND in further security of the obligations herein contained (*in the third place*), I, the said A, hereby assign to and in favour of the said B and his foresaids, redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, a policy of insurance granted by the

Company in my favour on my life for the sum of £                      , dated                      , and numbered                      , together with the said sum of £                      contained in said policy, and all bonus additions (*take in assignation of policy and relative clauses from Bond and Disposition and Assignation in Security by heir of entail in possession, p. 305*): AND I reserve power of redemption of the said lands and estate and others, and the said policy of insurance, at any term of Whitsunday or Martinmas, on three months' notice in writing, and that by payment or consignment in the said (*specify bank*), of the said principal sum, penalties, if incurred, interest and compound interest thereon, yearly additional sum, interest thereon, and expenses: AND I OBLIGE myself and my foresaids for the expenses which may be incurred by the said C or his foresaids in exercise of the powers hereby conferred or otherwise in consequence hereof, including the expenses of the whole procedure, writs, and securities before referred to, and the expenses of assigning and discharging this or any corroborative security: AND I consent to registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

## SECTION V

## BONDS OF CORROBORATION

Bonds of Corroboration and Disposition in Security are employed principally in cases where interest in arrear is to be accumulated with the principal sum, or where an additional security is to be given, or where the obligation is to be renewed by the heir of the debtor, though in this last case it is not usual to add a Disposition in Security to the Bond of Corroboration. Section 47 of the Conveyancing Act of 1874 declares that heritable securities for money, duly constituted upon an estate in land, together with any personal obligations to pay principal, interest, and penalties contained in the deed or instrument whereby the security is constituted, shall transmit against any person taking such estate "by succession, gift, or bequest, or by conveyance when an agreement to that effect appears *in gremio* of the conveyance, and shall be a burden upon his title in the same manner as it was upon that of his ancestor or author, without the necessity of a Bond of Corroboration or other deed or procedure."

Such bonds being granted for a prior debt, the Disposition in Security will be reducible under the Act 1696, c. 5, in so far as affecting lands not in the original security, if the granter becomes bankrupt within sixty days from the date of its registration in the Register of Sasines. In this event they will likewise be struck at by the Act 1621, c. 18.

**1. Bond of Corroboration and Disposition in Security where the Principal Sum and Arrears of Interest are accumulated and Additional Security is given.**

WE, A and B (*designations*), CONSIDERING that by Bond and Disposition in Security, dated the            day of           , and recorded (*specify register and date of recording*), I, the said A, bound myself, and my            heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to C (*designation*), his executors (*or* his heirs excluding executors) or assignees whomsoever, the sum of £            sterling of principal at the term of (*state term and place of repayment*), with interest at            per centum, and penalties if incurred, as therein expressed (*the narrative being taken from the bond narrated, mutatis mutandis*): AND IN SECURITY of the personal obligation therein contained, I, the said A, did thereby dispoise to the said C and his foresaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of a sale in virtue of the powers therein written, ALL AND WHOLE the

lands and estate of X and others therein particularly described (or referred to), all as the said Bond and Disposition in Security, dated and recorded as aforesaid, and containing sundry other clauses, in itself more fully bears: FURTHER CONSIDERING that the said Bond and Disposition in Security, and sums thereby due, are now vested in D (*designation*), conform to assignation by the said C in his favour, dated                      and recorded (*specify Register of Sasines and date of registration*): AND NOW SEEING that the said principal sum of £                      sterling, with interest thereof from the term of                      , amounting together as at the date hereof (*or if accumulated as at any other date, this will be mentioned, and the consequent alterations made*) to the sum of £                      sterling, are now owing to the said D, and that he has agreed, on condition of our granting these presents, to postpone payment of the said debt, THEREFORE WE, the said A and B, DO hereby, without hurt or prejudice to the Bond and Disposition in Security above narrated, but IN CORROBORATION THEREOF, *et accumulando jura juribus* BIND ourselves, jointly and severally, and our respective heirs, executors, and representatives whomsoever, renouncing the benefit of discussion, to pay to the said D, and his executors (*or heirs excluding executors*) or assignees, the said sum of £                      sterling, at the term of                      next, within the head office of the Bank at Edinburgh (*or whatever may be the place of payment in the original bond*), with a fifth part more of liquidate penalty in case of failure, and the interest thereof at the rate of                      per centum per annum from the date hereof (*or date of accumulation, whatever this may be*) to the said term of payment, and half-yearly, termly, and proportionally thereafter during the not-payment of the same, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said interest at the term of                      next for the interest due preceding that date, and the next term's payment thereof at                      following, and so forth half-yearly, termly, and proportionally thereafter during the not-payment of the foresaid accumulated principal sum thereof, with a fifth part more of the interest due at each term of liquidate penalty in case of failure in the punctual payment thereof: AND IN SECURITY of the personal obligations above written, we DISPONE to and in favour of the said D and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, ALL AND WHOLE (*here describe or validly refer*

*to the lands to be disposed in security, and specify or refer to real burdens, conditions, &c., if any, as before directed, p. 236), with the parts and pertinents thereof, and our whole right, title, and interest therein; AND THAT IN REAL SECURITY to the said D and his foresaids of the whole sums of money above written—accumulated principal, interest, and penalties: AND we assign the rents, &c. (as in the ordinary form of Bond and Disposition in Security, p. 236).*

In consequence of the terms of the 47th section of the Conveyancing Act already quoted, and the facilities thereby given for enforcement of the personal obligations contained in existing securities against a successor by gift or purchase, it will now be unnecessary to take a personal obligation from a purchaser of the lands, provided he has agreed in the conveyance in his favour that these existing obligations shall transmit against him. In the case of an heir, however, who under section 12 of the Conveyancing Act of 1874 is liable for the debts of his ancestor only to the extent of the value of the estate to which he succeeds, it may be considered advisable in certain cases to take a Bond of Corroboration, and we accordingly give the following form:—

## 2. Personal Bond of Corroboration *by an Heir.*

I, A (*designation*), CONSIDERING that by Bond and Disposition in Security, dated the                      day of                      , and recorded (*specify register and date of recording*), the now deceased B (*designation*), my father, bound himself, and his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to pay to C (*designation*), his executors (*or heirs excluding executors*) or assignees whomsoever, the sum of £                      sterling of principal, at the term of                      , with interest and penalties as therein expressed: AND IN SECURITY of the personal obligation therein contained the said B thereby disposed to the said C and his foresaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue hereof, ALL AND WHOLE the lands and estate of X, and others therein particularly described (*or referred to*), all as the said Bond and Disposition in Security, dated and recorded as aforesaid, and containing sundry other clauses, in itself more fully bears: FURTHER CONSIDERING that on the death of the said B I succeeded to him as his only son and nearest lawful heir in the said lands and estate, and completed a title thereto conform to decree of special service in my favour as heir aforesaid, obtained before the

Sheriff of Chancery (*or otherwise, as the case may be*), dated                      and recorded in Chancery                      and extracted                      , and also recorded in the (*specify Register of Sasines and date of registration*); AND ALSO CONSIDERING that the sums of money contained in the said Bond and Disposition in Security still remain due and unpaid, and that I have agreed at the request of the said C to grant these presents in manner under written in order that the personal obligations contained in the said Bond and Disposition in Security shall subsist and be effectual to the full extent thereof against me and my heirs and successors: THEREFORE, without hurt or prejudice to the Bond and Disposition in Security before narrated, or to the real security thereby constituted for payment of the sums of money thereby due, or to any right competent to the said C for the enforcement of the obligations therein contained against the personal estate and heirs *in mobilibus* of the said B, but IN CORROBORATION of said bond, *et accumulando jura juribus*, I, the said A, DO hereby BIND myself, and my heirs, executors, and representatives whomsoever, to make payment to the said C, his executors (*or heirs excluding executors*) or assignees whomsoever, of the foresaid principal sum of £                      sterling, and that at the term of                      (*here will follow the remainder of the ordinary personal obligation for payment, the interest running from the date of the ancestor's death, or from any other date up to which it may have been paid*): AND I BIND myself and my foresaids to pay the expense of assigning or discharging these presents, as well as the foresaid Bond and Disposition in Security, if necessary: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

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## SECTION VI

### BONDS OF RELIEF

#### *Bond of Relief and Obligation, and Disposition in Security to Cautioner.*

I, A (*designation*), CONSIDERING that by personal bond, dated                      , granted by me and by B (*designation*), we bound ourselves, and our respective heirs, executors, and representatives whomsoever,

jointly and severally, without the necessity of discussing them in their order, to pay to C (*designation*), his executors or assignees whomsoever, at the term of \_\_\_\_\_, the sum of £ \_\_\_\_\_ sterling, with interest thereon at the rate of \_\_\_\_\_ per centum per annum from the date of said bond to the said term of payment, and half-yearly, termly, and proportionally thereafter during the not-payment of the said principal sum, and that at two terms in the year, Martinmas and Whitsunday, by equal portions, with a fifth part more of the interest due at each term of liquidate penalty in case of failure, all as the said bond containing sundry other clauses in itself more fully bears: AND FURTHER CONSIDERING that although the said B became bound jointly and severally with me as aforesaid for payment of the sums due by the said bond, yet the whole sum of £ \_\_\_\_\_ sterling therein contained was received by me and applied to my own use, and that I alone am the true debtor therein; and that it was agreed between the said B and me, before he consented to join in executing the said bond, that I should grant him a Bond of Relief and Obligation and Disposition in Security in the terms after written: THEREFORE I hereby BIND myself, and my heirs, executors, and representatives whomsoever, jointly and severally, without the necessity of discussing them in their order, to warrant, free, and relieve the said B and his foresaids of and from payment of the sums of money—principal, interest, and penalties—contained in the bond above narrated, and also of and from the said bond itself, and all loss, damage, or expense which he or they shall sustain in any manner of way by or through his having become bound under the same: AND FOR THAT PURPOSE I BIND myself and my foresaids to make payment to the said C or his foresaids, at the term of \_\_\_\_\_ next, of the said principal sum of £ \_\_\_\_\_ sterling, with the whole interest that shall then be due thereon, and liquidate penalties stipulated as aforesaid in case of failure, if incurred; and to procure and deliver up to the said B or his foresaids the said bond cancelled, or, if the said bond shall have been recorded, to exhibit to him or them a valid and sufficient discharge thereof, or extract of such discharge, recorded in the Books of Council and Session, or other Judges' Books competent; OR OTHERWISE, in the option of the said B and in order to enable him to operate his own relief of the obligations undertaken by him as aforesaid, I BIND myself and my foresaids to make payment to the said B or his foresaids, at the said term of \_\_\_\_\_, of the foresaid principal sum of

£ , with the whole interest that shall then be due thereon, and liquidate penalties stipulated as aforesaid in case of failure, if incurred, all as contained in the foresaid bond, which is here held as repeated *brevitatis causa*; AND LIKEWISE of the further sum of £ , for enabling the said B to defray, and so relieve himself of all loss and expenses which he may sustain or incur in relation to the premises; but for which last-mentioned sum of £ the said B and his foresaids shall be bound to hold just count and reckoning with me and my foresaids, and he shall be bound to pay back to me and my foresaids so much thereof, if any, as shall remain in his hands after satisfying the loss and expenses before specified: RESERVING ALWAYS to the said B and his foresaids their claim against me and my foresaids, in terms of the personal obligation in favour of the said B hereinbefore written, for any balance due to them which may remain unpaid after applying the whole foresaid sum of £ towards liquidation of the said debt and expenses, or in connection therewith: AND IN SECURITY of the personal obligations hereinbefore written, I DISPONE to and in favour of the said B and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, ALL AND WHOLE (*here describe or validly refer to description of the lands, and specify or refer to real burdens, conditions, &c., if any, as before directed, p. 236*), with the parts and pertinents thereof, and my whole right, title, and interest, present and future, therein; AND THAT IN REAL SECURITY to the said B and his foresaids of the obligations herein undertaken by me, and of their relief from payment of the whole sums of money—principal, interest, and penalties—contained in the said bond, and expenses and others incurred or to be incurred in relation to the premises: AND I assign the rents: AND I assign the writs: AND I grant warrandice: AND I reserve power of redemption on my relieving the said B and his foresaids as aforesaid, or on my making payment to them as aforesaid in case and in the event before specified, which power of redemption shall be available to me or my foresaids without premonition by us to the said B or his foresaids: AND I oblige myself for the expense of assigning or discharging this security: AND on default in relieving the said B and his foresaids as aforesaid, or of making payment to them as before specified, I grant power of sale: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

## SECTION VII

## BONDS OF ANNUITY

## 1. Bond of Annuity and Disposition in Security.

I, A (*designation*), for the love, favour, and affection I have and bear to B (*designation*), and for other good causes and considerations, but without any price being paid to me therefor (*or IN CONSIDERATION OF the sum of £                      sterling, instantly paid to me by B, whereof I hereby acknowledge the receipt*) DO hereby BIND myself, and my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to pay to the said B or to his assignees, during all the days of the life of him, the said B, an annuity or yearly sum of £                      sterling, free of all burdens and deductions whatsoever, and that within the head office of the Bank of Scotland, in Edinburgh, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said annuity at the term of Whitsunday next for the half-year following, and so forth half-yearly and termly thereafter in advance during the lifetime of the said B, with a fifth part more of each term's payment of the said annuity of liquidate penalty in case of failure in the punctual payment thereof, and the interest of each term's payment at the rate of                      per centum per annum from the term when the same shall fall due during the not-payment: AND IN SECURITY of the personal obligation before written, I DISPONE to and in favour of the said B and his foresaids ALL AND WHOLE (*here describe or validly refer to the security lands, and real burdens, &c., if any, as directed, p. 236*); AND THAT IN REAL SECURITY to the said B or his foresaids of the foresaid annuity, interest thereof, and liquidate penalties: AND I assign the rents, so far as necessary to satisfy the said annuity and others as the same fall due: AND I assign the writs so far as necessary to make effectual the right hereby granted: AND I grant warrandice: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

In cases like the above, redemption is not in the contemplation of the granter of the bond and security; indeed, except where the annuity is

constituted as a security for money to be repaid, the right granted will not be subject to redemption, unless under very special circumstances. There is, in general, no power of sale in a deed of the above nature.

In the above example the annuity is payable in advance. If this be not intended, the necessary alterations will be made, and the amount will be apportionable under the Apportionment Acts. When annuities are granted in consideration of a price paid, and not subject to redemption, or of money advanced as a *quasi* loan, and redeemable, it is usual to make them commence from the date of the advance of the price or loan, and continue payable down to the day of the granter's death, or for a certain period after that event. Redeemable bonds of annuity, which were originally merely expedients for obtaining a high rate of interest, are now very seldom used. A form of such bond will be found on p. 658 of the fourth edition of these styles.

## 2. Bond of Annuity to a Wife for Infesting her in an Annuity furth of her Husband's Estate.

The form of such bonds will, of course, vary according to the circumstances of the case. But the following examples show the form which may be adopted in some of the cases most likely to occur:—

I, A (*designation*), being desirous of securing a suitable provision by way of annuity in favour of B (*name*), my wife, in case she shall survive me, DO hereby PROVIDE and DISPONE to the said B, during all the days of her life after my decease, in case she shall survive me, a free liferent annuity or jointure of £                      sterling per annum, exempted from all burdens and deductions whatsoever (except income-tax), payable to her at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms which shall happen after my decease for the half-year following, and so forth half-yearly and termly thereafter in advance during the lifetime of my said wife, with a fifth part more of each term's payment of liquidate penalty in case of failure in the punctual payment of the said annuity, and interest of the said annuity at the rate of £5 per centum per annum from the respective terms of payment thereof during the not-payment, furth of ALL AND WHOLE (*here describe or validly refer to the lands and real burdens, conditions, &c., already constituted, if any*), or furth of any part or portion thereof and readiest rents, profits, and duties of the same: AND FURTHER, without prejudice to the before-written provision for payment of the said annuity out of the lands and others

foresaid, which are to be primarily liable for the same, I BIND and OBLIGE myself, my heirs, and successors, and representatives whomsoever *subsidiarie* for payment of the said annuity to the said B at the foresaid terms, and with interest and penalty as before mentioned: AND I assign the writs to the effect of maintaining the right hereby granted: AND I assign the rents in so far as necessary to satisfy the said annuity, as the same shall fall due: AND I reserve power to alter or revoke these presents at any time of my life: AND I dispense with the delivery hereof during my life: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

The following clause may be introduced immediately before the assignation of writs:—

WHICH annuity or jointure of £                      is hereby declared to be in full satisfaction to my said wife of all terce of lands, *jus relictæ*, and everything else which she could claim as my wife by or through my decease, in case she shall survive me; all which rights and claims the said B shall be held by acceptance hereof to have renounced and discharged.

If the deed is not intended to be testamentary, the clauses reserving power of revocation and dispensing with delivery may be omitted, and a clause of warrandice may be added. The wife may be immediately infeft.

It may happen that the wife is entitled to receive under the Aberdeen Act, or powers contained in the entail, a jointure out of the husband's entailed estate, and that the bond for payment of the annuity out of the fee-simple estate is intended only to make up the annuity to a larger amount than could be competently charged upon the entailed estate. In such a case the bond over the fee-simple estate may be granted in the above form, for the whole amount of the intended annuity; and the following or a similar clause, varied as may be necessary in the circumstances, may be inserted in the form of the Bond of Annuity given above before the clause of assignation of writs, viz.—

AND WHEREAS, under the Entail Provisions Act, 1824, commonly known as the Aberdeen Act, I have granted (*or am about to grant*) in favour of the said B, a Bond of Annuity over my entailed estate of X, in the County of Y, for the whole amount with which I am entitled under the said Act to charge the said entailed estate in her favour, it is hereby PROVIDED and DECLARED that the sums which shall be receivable by her in each year under the said Bond of Annuity, from the said entailed estate or the heirs of entail therein shall be imputed

*pro tanto* in or towards payment of the annuity or jointure of £ sterling, hereinbefore provided for her; and she shall be entitled under these presents only to an annuity of such an amount as, with what she shall receive in each year under the said Bond of Annuity, will make up to her an annuity of £ sterling, free of all burdens and deductions.

The style of a contract of marriage containing a provision to the wife in terms of the Aberdeen Act will be found in the section of these styles which deals with marriage contracts. When no contract has been entered into between the parties, this provision may be constituted by bond, the style of which will vary but little from the terms used in the regular contract. The following may be taken as an example:—

**3. Bond of Annuity by Proprietor of Entailed Estate in favour of his Wife for the Maximum Annuity under the Entail Provisions Act, 1824, 5 Geo. IV. c. 87.**

I, A (*designation*), institute (or heir) of entail in possession of the entailed lands and estate of X, situated in the parish of Y and County of Z, being desirous to provide by way of annuity out of the said estate in favour of B (*full name*), my wife, in case she shall survive me, and having resolved to exercise the powers conferred by the Entail Acts: Do hereby PROVIDE and DISPONE to the said B, in life-rent during all the days of her life after my decease, in case she shall survive me, such a free life-rent annuity or jointure as shall be equal to, but shall not exceed, one-third part of the free yearly rent of the entailed lands and estate hereinafter mentioned, in so far as the same shall be let, and of the free yearly value thereof so far as the same shall not be let, after making the deductions specified in the Entail Provisions Act, 1824, all as the same may happen to be at my death; to be uplifted and taken the said annuity, free of all burdens and deductions, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms which happen after my decease, for the half-year following, and so forth half-yearly and termly thereafter at the said terms during the life of the said B, with a fifth part more of penalty for each term's failure in the punctual payment of said annuity, and

interest of said annuity at the rate of five pounds per centum per annum, so long as the same shall remain unpaid, furth of ALL AND WHOLE (*here describe or validly refer to the entailed lands and estate, and real burdens, conditions, &c., already constituted, if any*), or furth of any part or portion thereof, and readiest rents, profits, and duties of the same: DECLARING ALWAYS that said annuity is provided by me, and shall be accepted by the said B under all the conditions, restrictions, and limitations applicable to such annuities which are contained in the said entail statutes: AND I assign the writs in so far as necessary to make effectual the right hereby granted: AND I assign the rents so far as necessary to satisfy the said annuity as the same shall fall due: AND I BIND and OBLIGE the heirs of entail succeeding to me to make payment of the said annuity to the said B at the foresaid terms, and with interest and penalty as before mentioned, but always with and under the conditions, restrictions, and limitations before referred to: AND I reserve power to revoke or alter these presents in whole or in part: AND I dispense with the delivery hereof during my life: AND I consent to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

If the wife is proprietrix of an entailed estate, a bond in favour of her husband may be framed from the above example.

**4. Bond of Annuity by an Heir of Entail in favour of his Wife, in virtue of the Powers contained in the Aberdeen Act, for an Annuity of limited amount.**

I, A (*designation*), heir of entail in possession of the entailed lands and estate of X and others after described, CONSIDERING that by the Entail Provisions Act, 1824, it is, *inter alia*, enacted that it shall and may be lawful to every heir of entail in possession of an entailed estate under any entail then made or thereafter to be made in Scotland under the limitations and conditions therein mentioned, to provide and infest his wife in a liferent provision out of his entailed lands and estates, by way of annuity, to the extent therein-mentioned; and being desirous of securing a suitable annuity out of my said entailed lands and estate to B (*full name*), my wife, during her life after my death, in case she shall survive me, THEREFORE I DO hereby, in virtue of the foresaid Act of Parliament, PROVIDE and DISPONE to the said B,

my wife, during all the days of her life after my decease, in case she shall survive me, ALL AND WHOLE a free liferent annuity of £ sterling, exempted from all burdens and deductions whatsoever (but subject to restriction always to the extent after specified, in the event, and during the period after mentioned), to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms which shall happen after my decease for the first half-year following, and so forth half-yearly and termly thereafter in advance during the lifetime of my said wife, with a fifth part more of liquidate penalty for each term's failure in case of not punctual payment of said annuity, and the interest of said annuity at the rate of        per centum per annum from the respective terms of payment thereof during the not-payment of the same, furth of ALL AND WHOLE (*here describe or validly refer to the entailed estate, and real burdens, conditions, &c., if any, other than those of the entail, as above shown, p. 236*), or furth of any part or portion of the said entailed lands and estate, and readiest rents, profits, and duties of the same: PROVIDING ALWAYS and DECLARING that in case I shall predecease C, my mother, widow of the now deceased D (*designation*), my father, the foresaid annuity hereby provided to my said wife shall be restricted to the sum of £ sterling yearly during the lifetime of my said mother, payable at the terms, by the proportions, and with penalty in case of failure, and interest during the not-payment, in like manner as before provided with reference to the said annuity of £        : AND FURTHER DECLARING that the said annuity (restrictable as aforesaid to the extent, in the event, and during the period before specified) is provided under all the conditions and limitations contained in the foresaid Act of Parliament, in so far as the same are applicable thereto: AND I assign the rents, but only so far as necessary to satisfy the said annuity, restrictable as aforesaid, to the extent, in the event, and during the period before specified: AND I assign the writs, but only so far as necessary to support the right hereby granted: AND I grant warrandice, but under the declarations and provisions before expressed and referred to: AND I reserve power to myself at any time of my life, and even on death-bed, to revoke or alter these presents in whole or in part: AND I dispense with the delivery hereof, and declare these presents, though found in my own repositories or in the custody of any other person undelivered at the time of my death, to be equally valid and effectual

as if delivered, any law or practice to the contrary notwithstanding :  
AND I consent to registration for preservation and execution.—IN  
WITNESS WHEREOF, &c.

This being a *mortis causa* deed could not be placed on record until after the granter's death, by which time it would be seen whether the reserved powers to alter or revoke have been exercised.

If intended to be at once made absolute, these powers would not be inserted.

If the annuity is intended to come in place of the wife's legal provisions, the following clause should be introduced in the Bond of Annuity, immediately before the assignation of rents :—

WHICH annuity of £                      hereby granted, but restrictable always as aforesaid, to the extent, in the event, and for the period before specified, is hereby declared by me to be, and shall be accepted by my said wife, as in full satisfaction to her of all terce of lands and half or third of moveables which she could claim by law from me, my heirs, executors, or successors, in case she shall survive me.

#### 5. Bond of Annuity *by Heir Apparent.*

I, A (*designation*), eldest son of B (*designation*), being heir apparent to the entailed lands and estate of X in the County of Z, of which lands and estate the said B is now the heir in possession, with the special advice and consent of the said B, and the said B for himself, his own right and interest, and we both with one consent being desirous to provide by way of annuity out of the said lands and estate in favour of C, wife of me, the said A, and having resolved to exercise the powers conferred by the Entail Provisions Act, 1824, and the Entail Amendment Act, 1868, DO hereby PROVIDE and DISPONE, &c. [*as in preceding styles, according to circumstances*].

The following form of Notarial Instrument may be used where it is not desired to record the bond itself, or the deed containing it, in the Register of Sasines :—

#### 6. Notarial Instrument *on Unrecorded Bond and Disposition in Security in favour of the Original Creditor.*

*Section 17 and Schedule (J) of the Consolidation Act of 1868.*

AT                      there was, on behalf of B (*designation*), presented to me, notary public subscribing, a Bond and Disposition in Security

granted by A (*designation*), and dated (*insert the date*): BY WHICH Bond and Disposition in Security the said A granted him to have instantly borrowed and received from the said B the sum of £ sterling, which sum he bound himself, and his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said B, his executors (*or his heirs excluding executors*) or assignees whomsoever (*here insert verbatim the remainder of the personal obligation as contained in the bond*): AND IN SECURITY of the personal obligation therein written and before narrated, the said A disposed to and in favour of the said B, and his foresaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE [*or if there be other subjects which it is not desired to include in the Notarial Instrument, say—inter alia, ALL AND WHOLE (here describe or refer to the description of the subjects as described or referred to in the bond, and specify or refer to real burdens, conditions, &c., if any, as recited or referred to in the bond)*]; AND THAT IN REAL SECURITY to the said B and his foresaids of the whole sums of money therein written, —principal, interest, and penalties: WHEREUPON this instrument is taken in the hands of L (*insert name and designation of notary public*), in the terms of the "Titles to Land Consolidation (Scotland) Act, 1868."—IN WITNESS WHEREOF, these presents, written on this and the preceding pages of by G H, my clerk, are subscribed by me before these witnesses, the said G H and J K, also my clerk.

G H, *witness.*

L, *Notary Public.*

J K, *witness.*

The notary usually adds his motto, although that is not done in the statutory forms.

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## SECTION VIII

### ASSIGNATIONS

#### 1. Assignment of a Bond and Disposition in Security *duly constituted by Infeftment.*

I, A (*name and design cedent*), IN CONSIDERATION of the sum of (*insert sum*) now paid to me by B (*name and design assignee*), DO hereby

ASSIGN and DISPONE to and in favour of the said B, and his executors (or heirs excluding executors) and assignees whomsoever, a Bond and Disposition in Security (or heritable bond, or other security, as the case may be), dated (insert the date, and when the bond itself has been recorded, add—and recorded as after mentioned), for the sum of £ , granted by C (designation) in my favour (or in favour of D, as the case may be), with interest from the (insert date); and also ALL AND WHOLE (describe or validly refer to the subjects in terms of Schedule (O) of the Conveyancing Act of 1874, and specify or refer to real burdens, conditions, &c., if any, in terms of Schedule (D) of the Titles to Land Consolidation Act of 1868), all as specified and described in the said Bond and Disposition in Security, recorded in the (specify the Register of Sasines and date of registration).—IN WITNESS WHEREOF, &c.

If the assignation is granted not by the original creditor in the security, but by a person to whom the security has already been assigned, or in whom it has become vested by succession or diligence, it will shortly narrate the title or series of titles by which the granter has right to the security. An example of the way in which this is done will be found on p. 333.

## 2. Assignation of a Recorded Bond and Disposition in Security which has been Partially Discharged.

I, A (designation), IN CONSIDERATION of the sum of £ sterling now paid to me by B (designation), DO hereby ASSIGN and DISPONE to and in favour of the said B and his executors (or heirs excluding executors, as may be desired) and assignees whomsoever, but only to the extent and effect after written, a Bond and Disposition in Security, dated , and recorded as after mentioned, for the sum of £ sterling, granted by F (designation) in my favour, with interest from the day of ; and also ALL AND WHOLE (here describe or validly refer to description of the lands, &c., and insert or refer to real burdens, conditions, &c., if any, as in Form 1, p. 330), all as specified and described in the said Bond and Disposition in Security recorded in (specify Register of Sasines and date of registration): BUT DECLARING ALWAYS that these presents do and shall convey the said Bond and Disposition in Security only to the extent of the sum of

£        sterling of principal, being the balance now remaining due on the said Bond and Disposition in Security, with the interest thereof and penalties corresponding thereto if incurred; and do and shall convey the said lands and others therein contained and hereinbefore described (*or* referred to) in security thereof only to the extent fore-said.—IN WITNESS WHEREOF, &c.

### 3. Assignment of a Bond and Disposition in Security containing a Collateral Personal Obligation.

I, A (*designation*), IN CONSIDERATION of the sum of £        sterling now paid to me by B (*designation*), DO hereby ASSIGN, DISPONE, and CONVEY to the said B, his executors (*or* heirs excluding executors) and assignees whomsoever, a Bond and Disposition in Security, dated and recorded as after mentioned, for the sum of £        , and which Bond and Disposition in Security, in so far as regards the obligation for payment of the said principal sum, interest thereon, and penalties therein expressed (*or* in so far as regards the interest on said sum and corresponding penalties), is granted by C and D (*designations*), and in so far as regards the Disposition in Security by the said C in my favour, with interest from the        ; and also ALL AND WHOLE, &c. (*as in Form 1, p. 330*).

When the obligation for the principal and interest, or interest only, is separate from the Bond and Disposition in Security, the assignment will convey (*in the first place*) Bond and Disposition in Security, &c. (*as in the form on p. 330*), down to the specification of the date of recording the Bond and Disposition in Security, after which there will be added:—

AND (*in the second place*) a Collateral Bond and Obligation for payment of the principal sum, interest thereon, and penalties contained in said bond (*or* for payment of the interest on the foresaid sum of £        and relative penalty if incurred), dated        , and granted by D (*designation*) in my favour.—IN WITNESS WHEREOF, &c.

#### 4. Partial Assignment of a Bond and Disposition in Security.

This style will be the same as Style No. 1, p. 329, except that after the words "to and in favour of B and his executors (*or* heirs excluding "executors) and assignees whomsoever" the words "but only to the extent "and effect after specified" will be introduced, and before the testing clause the following declaration will be inserted:—

BUT DECLARING ALWAYS that these presents do and shall convey the said Bond and Disposition in Security only to the extent of the sum of £            of the principal sum therein contained, with the interest thereof from the (*specify date*), and penalties corresponding thereto in case of failure, if incurred; and do and shall convey the lands and others before described (*or* referred to), in security of the said sums hereby assigned only, and to the effect of giving a preference over the said lands and others to my said assignee, as in right of said sums, *pari passu* with (*or* immediately postponed, *or* prior to, as may be arranged) the security and preference held by me and my heirs and successors (*or as the case may be*) as in right of the remainder of the sums—principal, interest, and penalties—contained in the said Bond and Disposition in Security.

The above clause as to ranking is not essential in the case of a partial assignment where the sum assigned is to rank *pari passu* with the remainder of the sums due under the bond. If the balance of the bond has been paid and the lands disburdened, the following or a similar clause may be inserted immediately before the testing clause:—

AND I have herewith delivered the said bond and the other writs before specified, by which I acquired right thereto (*or* to the portion thereof hereby assigned).

If the greater portion of the sum in the bond is held by the granter of the assignment, the Bond and Disposition in Security will not be delivered up, and the clause will run as follows:—

AND in respect the remainder of the principal sum contained in said Bond and Disposition in Security, and interest and penalties corresponding thereto, remains due to me, and I have not herewith delivered the said Bond and Disposition in Security to the said B, I BIND myself, and my executors and assignees (*or* heirs and assignees), to make the same or an extract thereof furthcoming to the said B and his foresaids on all necessary occasions, on a receipt and obliga-

tion for redelivery thereof within a reasonable time and under a suitable penalty.

But if the larger portion be contained in the Assignment granted, the clause will run thus:—

AND I have herewith delivered the foresaid Bond and Disposition in Security to the said B, but in respect I am still in right of the remainder of the principal sum therein contained, the said B shall be bound, as by acceptance hereof he binds and obliges himself and his forebears, to make the same furthcoming to me and my executors and assignees (or heirs and assignees) on all necessary occasions, on a receipt and obligation for redelivery thereof within a reasonable time and under a suitable penalty.

**5. Partial Assignment of a Recorded Bond and Disposition in Security where Holders have acquired Right by a Series of Titles.**

WE, A, B, and C (*designations*), sole surviving original and assumed trustees of the deceased G (*designation*), acting under the Trust-Disposition and Settlement and Deed of Assumption after mentioned, IN CONSIDERATION of the sum of £        sterling, now paid to us as trustees foresaid by T (*designation*), DO hereby ASSIGN and DISPONE, but only to the extent after mentioned, to and in favour of the said T, and his executors (or heirs excluding executors) and assignees whomsoever, a Bond and Disposition in Security, dated        , and recorded as after mentioned, for the sum of £        sterling, granted by Y (*designation*) in favour of Z (*designation*), with interest from the        day of        ; and also ALL AND WHOLE (*here describe or validly refer to the lands, and specify or refer to real burdens, conditions, &c., if any, all as in Form 2, p. 330*), all as specified and described in said Bond and Disposition in Security, recorded in (*specify Register of Sasines and date of recording*): BUT DECLARING HEREBY that these presents do and shall convey the said Bond and Disposition in Security only to the extent of £        sterling of principal, with the interest thereof and penalties corresponding thereto, and the lands and others therein contained and hereinbefore described (or referred to), in security of the sums hereby assigned,

only and to the effect of giving a preference over the said lands and others to our said assignee and his foresaids as in right of the said sums hereby assigned *pari passu* with the security and preference held by the parties now in right of the remainder (or with us, the granters hereof, as in right of the remainder, *as the case may be*) of the sums—principal, interest, and penalties—contained in said Bond and Disposition in Security: To WHICH Bond and Disposition in Security, sums of money thereby due, and lands and others therein contained, we, as trustees foresaid, acquired right (*if only to a part, to the extent foresaid*), conform to the following writs, viz.—(*First*) Assignment of said Bond and Disposition in Security (*if partial, to the extent foresaid*), granted by the said Z in favour of the said G, dated \_\_\_\_\_, and recorded (*specify Register of Sasines and date of recording*); (*Second*) Trust-Disposition and Settlement by the said deceased G, dated \_\_\_\_\_, and registered in the Books of Council and Session \_\_\_\_\_, in favour of us, the said A and B, and of D, who declined to accept, as trustees, for the ends, uses, and purposes therein expressed; (*Third*) Notarial Instrument in favour of us, the said A and B, as trustees and executors duly confirmed of the said G, proceeding on the general conveyance contained in said Trust-Disposition and Settlement, recorded in (*specify register and date of recording*); and (*Lastly*) Deed of Assumption and Conveyance by us, the said A and B, as trustees foresaid, in favour of ourselves and the said C as trustees under the foresaid Trust-Disposition and Settlement, dated \_\_\_\_\_, and recorded (*specify Register of Sasines and date of recording*): AND we have herewith delivered to the said T the said Bond and Disposition in Security, and also the said assignment and Notarial Instrument, being the writs first and third above-mentioned, but under obligation to make said Bond and Disposition in Security furthcoming to all parties having right thereto (or to us and our assignees as in right of the remainder of the sums therein contained), on a receipt and obligation for redelivery within a reasonable time, and under a suitable penalty: AND we bind ourselves, as trustees foresaid, and our successors in office, to make the foresaid Trust-Disposition and Settlement, and Deed of Assumption, or extracts thereof, furthcoming to the said T and his foresaids on all necessary occasions on a like receipt and obligation for redelivery.—IN WITNESS WHEREOF, &c.

**6. Assignment of a Cash-Credit Bond and Disposition in Security granted in Security of a Cash-Credit.**

Such bonds can be transferred only to the effect of placing a new creditor in the right of the sum or balance due thereon at the date of the transfer, but not so as to authorise an operating account with the new creditor, and this transfer is consequently of comparatively rare occurrence :—

WE, the                      Bank (*describe or specify the bank as in the bond*), IN CONSIDERATION of the sum of £                      sterling now paid to us (*or to our manager or cashier, as the case may be, for our behoof*), by B (*designation*), DO hereby ASSIGN and DISPONE to and in favour of the said B, his executors (*or heirs excluding executors*) and assignees whomsoever, a Bond and Disposition in Security, dated                      , and recorded as after mentioned, granted by C (*designation*) in our favour, for the sum of £                      sterling, or such part or parts thereof as should at any time be due upon a current cash-account to the amount of £                      sterling, which the court of directors of the said                      Bank agreed to allow to be kept in the name of the said C in the books of the said                      bank, and to be operated upon by him, or any person or persons duly authorised by him to that effect: BY WHICH Bond and Disposition in Security it is declared, *inter alia*, that a certificate or stated account to be made out from the books of said bank, and signed by our manager, cashier, secretary, or accountant for the time time being (*or otherwise, as the case may be, following precisely the terms of the bond*), should ascertain and constitute a balance and charge against the said C and his foresaids under the said Bond and Disposition in Security; AS ALSO a certificate or stated account endorsed hereon, dated                      , under the hand of                      , our present cashier (*or other officer, as the case may be*), instructing that the balance now due on the foresaid cash-account amounts to the sum of £                      , which certificate is also subscribed by the said C in token of the same being correct, and of the said balance being justly due by him on the said cash-account; and also ALL AND WHOLE, &c. (*complete as in the case of an ordinary assignment*).

Securities for cash-credit accounts are redeemable without premonition. If premonition is stipulated for as part of the arrangement under which

the transfer takes place, a separate agreement on that point with the debtor will be necessary, and this ought to be recorded in the appropriate Register of Sasines.

**7. Assignment of a Bond and Disposition in Security *where the original Personal Obligation has been Discharged and a new Personal Bond of Corroboration granted.***

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling now paid to me by B (*designation*), DO hereby ASSIGN and DISPONE to and in favour of the said B, his executors (*or heirs excluding executors*) and assignees whomsoever (IN THE FIRST PLACE), a Bond and Disposition in Security, dated (and when recorded, add—recorded as after mentioned), for the sum of £ sterling, granted by C (*designation*) in my favour; declaring always that the personal obligations contained in the said Bond and Disposition in Security have been discharged by me in so far as these affect the said C and his heirs, conform to discharge in favour of the said C, dated , and (*if this be so*) recorded in the (*specify Register of Sasines and date of registration*), and the Bond of Corroboration hereinafter assigned, substituted therefor, with interest on said sum of £ from the day of (*specify date*); and also ALL AND WHOLE (*here describe or validly refer to the lands, and also specify or refer to real burdens, conditions, &c., if any, as before directed, p. 330*), all as specified and described in the said Bond and Disposition in Security, recorded (*here specify the Register of Sasines and date of registration; if the granter of the assignation is not the original creditor, make the necessary alterations above, and add—To which Bond and Disposition in Security I acquired right by the following titles, viz.—here narrate titles*): AND (IN THE SECOND PLACE) I hereby ASSIGN to the said B and his foresaids a Personal Bond of Corroboration for the sum of £ sterling of principal, with interest and penalties contained in said bond, dated (*specify date*), and granted in my favour by D (*designation*), who is now the proprietor of said lands and others (*if the cedent has acquired right to the Bond of Corroboration by a series of titles, the connecting links will here be specified in like manner as in the case of the original bond*).—IN WITNESS WHEREOF, &c.

**8. Assignment of a Bond and Assignment and Disposition in Security containing Assignment of a Policy of Assurance on the Debtor's Life, and Conveyance of his Interest in Entailed Lands in Security.**

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling, now paid to me by B (*designation*), DO hereby ASSIGN and DISPOSE to and in favour of the said B, his executors (*or heirs excluding executors*) and assignees whomsoever, a Bond and Assignment and Disposition in Security, dated the                      day of                      , and recorded as after mentioned, granted by C (*designation*), in my favour, for the sum of £                      sterling, and by which the said C also bound himself, and his heirs, executors, and representatives whomsoever, to pay or cause to be paid the annual premium of £                      sterling on the Policy of Assurance therein and hereinafter assigned, yearly during the life of the said C, or so long as the said principal sum of £                      , or any portion thereof, should remain unpaid, and the additional premiums which might become due in the events therein mentioned, and also the additional sum of £                      sterling, yearly during the life of the said C, or so long as the sum thereby due, or any portion thereof, should remain unpaid, to be applied in or towards payment of the said additional premiums of insurance, and all loss and damage to become due in any of the events therein mentioned, with interest and expenses, all as therein more particularly set forth, and to pay and perform the whole other conditions and obligations relative to the said policy, and renewed or new policy or policies, of insurance therein contained, and herein held as repeated *brevitatis causa*, WITH INTEREST on the said principal sum of £                      from the (*insert date*): AND ALSO, I hereby ASSIGN to the said B and his foresaids a Policy of Assurance (*here will follow the specification and recital of the Policy of Assurance as contained in the bond assigned*), with all the right and interest which I have in or to the said Policy of Assurance, and all claim, benefit, or advantage which may arise thereby in any manner of way, with full power to my said assignee to uplift and receive the sums which may thereby become due, and to discharge or assign and convey the same, and generally to do everything in the premises which I could have done before granting

hereof; which assignation I bind myself and my heirs and representatives whomsoever, to warrant from fact and deed: DECLARING ALWAYS that in case during the life of the said C, the said B or his foresaids shall receive payment of the foresaid principal sum of £                    sterling, interest thereof, and penalties therein stipulated, in case of failure, if incurred, and of the whole other sums due to them under the said Bond and Assignation and Disposition in Security (*here will follow the obligation on the assignee to retrocess in the policy, or, alternatively, to account for the proceeds, as in the bond assigned, mutatis mutandis*): AND DECLARING FURTHER that in case and so far as the said B or his foresaids shall receive the said additional yearly sum of £                    sterling, he or they shall be bound to account to the said C and his foresaids for the surplus, if any, in their hands, after satisfying the purposes for which the same is made payable, according as the intromissions of the said B or his foresaids shall be instructed by an account under their hand, without the necessity of any further voucher: AND ALSO, I hereby DISPONE to the said B and his foresaids, heritably, but redeemably, as mentioned in said Bond and Assignation and Disposition in Security, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*here describe or validly refer to the subjects and real burdens, conditions, &c., other than those of the entail, if any, in the same terms as in the bond, where this is not too long; or as in Form 1, p. 330*); all as specified and described in the said Bond and Assignation and Disposition in Security, recorded in the (*specify Register of Sasines and date of registration*): BUT WHEREAS the said C holds the lands and others disposed by said Bond and Assignation and Disposition in Security, by virtue of a Deed of Entail (*here will follow, mutatis mutandis, the declarations applicable to the entail as contained in the bond, &c., assigned down to the Assignation of Rents, p. 306*).—IN WITNESS WHEREOF, &c.

#### 9. Assignation of a Bond of Annual-Rent granted by an Heir of Entail over an Entailed Estate.

I, A (*designation*), IN CONSIDERATION of the sum of £                    sterling, now paid to me by B (*designation*), DO hereby ASSIGN and

DISPONE to and in favour of the said B, his executors (*or heirs excluding executors*) and assignees whomsoever, a Bond of Annual-Rent, dated , granted in my favour by C (*designation*), heir of entail in possession of the entailed lands and estate of X, in the County of G, in virtue of the "Entail Acts," for payment to me and my heirs and assignees of an annual rent of £ sterling, being an annual rent at the rate of £7, 2s. sterling for every £100 of the sum of £ , yearly during the full period of twenty-five years after the day of , being the date of the decree authorising the said charge, and that half-yearly during the said last-mentioned period, at the terms of Whitsunday and Martinmas (*or as the case may be*) in each year, by equal portions, my said assignees having right to the annual rents to become due under the said Bond of Annual-Rent from and after the date hereof (*or as the case may be*); and also NOT ONLY ALL AND WHOLE, &c. (*here will follow a specification of the annual rents to be uplifted out of the lands described in the Bond of Annual-Rent*), But also ALL AND WHOLE (*here will follow a description or reference to the lands disposed in security*), all as specified and described in the said Bond of Annual-Rent, recorded (*specify the Register of Sasines and date of registration*).  
—IN WITNESS WHEREOF, &c.

#### 10. Assignment of a Bond of Annuity and Disposition in Security.

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling now paid to me by B (*designation*), DO hereby ASSIGN and DISPONE to and in favour of the said B, his executors (*or heirs excluding executors*) and assignees whomsoever, a Bond of Annuity and Disposition in Security, dated the day of (*if recorded, say—and recorded as after mentioned*), granted by C (*designation*) in my favour, for payment to me or my assignees during all the days of my (*or his, as the case may be*) life of an annuity or yearly sum of £ sterling, free of all burdens and deductions whatsoever, at two terms in the year, Whitsunday and Martinmas, by equal portions, the first term's payment of said annuity falling due to my said assignees, in virtue hereof, being

that which will become payable at the term of                      next, for the half-year preceding (*or following, as the case may be*); and also ALL AND WHOLE, &c. (*here describe or validly refer to the lands or other security subject*), all as specified and described in the said Bond of Annuity and Disposition in Security, dated and recorded (*specify Register of Sasines and date of recording*).—IN WITNESS WHEREOF, &c.

**11. Assignment of a Bond of Annuity granted by an Heir of Entail in favour of his Wife, in virtue of the Powers contained in the Aberdeen Act, 5 Geo. IV. c. 87).**

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling now paid to me by B (*designation*), DO hereby ASSIGN and DISPONE to and in favour of the said B, his executors (*or heirs excluding executors*) and assignees whomsoever, a Bond of Annuity, dated                      (*if recorded, say—and recorded as after-mentioned*), granted by the now deceased D (*designation*), then heir of entail in possession of the entailed lands and estate of X and others therein described, in virtue of the powers conferred by the Entail Provisions Act, 1824, in my favour (*or, if necessary, say—in favour of me, the said A, therein designed; here state designation of the present granter as contained in the bond*), in liferent during all the days of my life after his decease, in case I should survive him, for a free liferent annuity of £                      sterling, exempted from all burdens and deductions whatsoever (*or otherwise, as in bond; and if subject to restriction, say—but subject to restriction always to the extent therein and after specified, in the event and during the period therein and after mentioned*), to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, by equal portions, with penalty and interest as therein specified, furth of ALL AND WHOLE (*here describe or validly refer to the subjects out of which the annuity is payable, and specify or refer to real burdens, &c., if any, all as in the bond*), or furth of any part or portion thereof, and readiest rents, profits, and duties of the same, all as specified and described in said Bond of Annuity, which is recorded in the (*specify Register of Sasines and date of recording*): PROVIDING ALWAYS and DECLARING that in case, &c. (*here will follow the recital of the clause of restriction, if any*): AND FURTHER DECLARING that the said annuity (*if subject to restriction*

—restrictable as aforesaid to the extent, in the event, and during the period before specified) was provided under all the conditions, restrictions, and limitations contained in the foresaid Act of Parliament and other Entail Statutes, in so far as the same are applicable thereto, and that these presents are granted under said conditions, restrictions, and limitations, and not otherwise, and that the first term's payment of said annuity to be made to my assignees in virtue hereof shall be that which will be due under the said Bond of Annuity at the term of                      next for the half-year preceding (or following, *as the case may be*).—IN WITNESS WHEREOF, &c.

Such annuities are more frequently assigned by way of Bond and Assignment in Security for advances, the security including an assignment of a policy or policies of insurance on the granter's life in terms similar to bonds by an heir of entail, of which examples have been already given.

## 12. Disposition and Assignment of a Right in Security constituted by Decree of Adjudication and Infeftment.

I, A, (*designation*), IN CONSIDERATION of the sum of £ sterling now paid to me by B (*designation*), DO hereby SELL and DISPONE to and in favour of the said B, and his executors (*or heirs excluding executors*) and assignees whomsoever, heritably, but under reversion, conform to law, ALL AND WHOLE (*here describe or validly refer to the lands and real burdens, conditions, &c., if any, as before directed*), but under reversion as aforesaid: AND I assign the writs, and specially, without prejudice to the said generality, a Decreet of Adjudication of the said lands and others, obtained at my instance against C (*designation*), whereby the said lands were adjudged and decerned and declared to belong to me for payment of the accumulated sums of £                      , due to me as therein specified, with the interest thereof during the not-redemption; AND I have herewith delivered up the writs hereby specially assigned, conform to inventory thereof annexed and subscribed by me as relative hereto: AND I assign all right which I have to obtain delivery or exhibition of the writs of the lands foresaid which are not herewith delivered up: AND I assign the sums contained in and due by the said Decreet

Adjudication, and grounds and warrants thereof, on payment whereof the said lands and others are redeemable: AND I assign the rents now due and to become due during the not-redemption: AND I grant warrandice from my own facts and deeds only: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

If the Decree of Adjudication has itself been recorded in the Register of Sasines, it will, in the clause of assignation of writs, be referred to by its date and the date of recording, and the necessary alterations made in the style.

**13. Assignation by an Heritable Creditor, in favour of the Purchaser of an Estate, of a Bond and Disposition in Security over the Estate, to be held as a Collateral Security of the Purchase.**

I, A (*designation*), CONSIDERING that I have right to the Bond and Disposition in Security after specified, granted by B (*designation*), over the lands and others after described, and that the said lands and others have been purchased from the said B by C (*designation*), and it has, *inter alia*, been arranged that on payment to me of the sums contained in the said Bond and Disposition in Security the same shall be assigned by me to the said C, to be held by him as a collateral security *pro tanto* of his purchase, as hereinafter more fully expressed: THEREFORE, IN CONSIDERATION of the sum of £ sterling now paid to me by the said C, with the approval of the said B, as signified by his subscription hereto, and which sum so paid to me the said B hereby declares to be a payment to account of the price of the said lands and others due to him, and of which sum so paid he discharges the said C and his heirs and successors whomsoever, I DO hereby ASSIGN and DISPONE to and in favour of the said C, and his heirs, excluding executors (*or as may be desired*), and assignees whomsoever, a Bond and Disposition in Security, &c. (*as in Form 1, down to the testing clause*): PROVIDING ALWAYS and DECLARING that these presents are granted, and shall be accepted and held, by the said C and his foresaids only as a collateral security *pro tanto* of his purchase of the lands and others foresaid, and that the personal obligations contained in the foresaid Bond and Disposition in Security, and which are hereby assigned, shall nowise be

used against the said B or his foresaids unless the lands and others foresaid shall be evicted from the said C or his foresaids on account of any act or deed of the said B, or any defect in his title to the said lands (*or as the case may be*): BUT without prejudice to the said C or his foresaids, using the said Bond and Disposition in Security and these presents in any question of competition, or otherwise, as against third parties, at any time and in any way he or they may think proper.—IN WITNESS WHEREOF, &c.

This assignation must be subscribed by B as well as A, and is usually incorporated in the disposition of the lands in favour of the purchaser.

**14. Transmission of the Debtor's Obligation in a Bond and Disposition in Security by an Agreement in gremio of a Conveyance of the Security Subjects.**

By section 47 of the Conveyancing Act of 1874 it is enacted that "an heritable security for money duly constituted upon an 'estate in land'" (subject to the limitation provided by the Act in the case of an heir) "shall, together with any personal obligation to pay principal, interest, and penalty contained in the deed or instrument whereby the security is constituted, transmit against any person taking such estate by succession, gift, or bequest, or by conveyance when an agreement to that effect appears *in gremio* of the conveyance, and shall be a burden upon his title in the same manner as it was upon that of his ancestor or author, without the necessity of a bond of corroboration or other deed or procedure."

Where it is arranged that the purchaser shall undertake the personal obligations in an existing security, the narrative clause of the disposition may be expressed as follows:—

I, A (*designation*), heritable proprietor of the subjects hereinafter disposed, IN CONSIDERATION of the sum of £                      sterling, instantly paid to me by B (*designation*), of which I hereby acknowledge the receipt, and also in consideration of his freeing and relieving me of the sum of £                      sterling contained in a Bond and Disposition in Security over said subjects granted by me (*or as the case may be*) in favour of C (*designation*), dated                      , and recorded (*specify Register of Sasines and date of recording*), and interest and penalties therein contained, it being hereby agreed, as the said B by his subscription hereto (*or by acceptance hereof*) AGREES and DECLARES, that the heritable security thereby constituted with the said sum of £                      interest thereof

from the term of entry hereinafter specified, and the whole other personal obligations therein contained, shall transmit against him and be a burden on his title in terms of the forty-seventh section of the "Conveyancing (Scotland) Act, 1874," the said two sums of £ and £ , amounting together to the sum of £ sterling, being the agreed-on price of said subjects.—Do hereby **SELL and DISPONE**, &c.(a)

Such an agreement does not relieve the original granter of the bond in any question with the creditor.(b) If that be desired, the creditor should be made a party to the conveyance, to the effect of discharging the seller of his personal obligations under the bond. It is usual to except the existing security from the warrandice.

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## SECTION IX

### TRANSMISSION OF REAL BURDENS

By section 30 of the Conveyancing Act of 1874 it is provided that "real burdens upon land may be assigned, conveyed or transferred, and "extinguished or restricted, and titles thereto may be completed, as "nearly as may be in the same manner as in the case of heritable "securities constituted or requiring to be constituted by infestment in "favour of the creditor, as defined by 'The Titles to Land Consolidation "(Scotland) Act, 1868,' and the whole provisions, enactments, and forms "of that Act and of this Act relative to the assignation, conveyance, or "transference, and extinction or restriction of bonds and dispositions in "security, and other heritable securities constituted or requiring to be "constituted by infestment as aforesaid, and to the completing of titles "thereto, and also the forms referred to, as well as the provisions and "enactments contained in section 117 of the said Act, shall be taken to "apply, and shall apply, as nearly as may be, to real burdens upon "land."

#### 1. Assignation of a Personal Bond and relative Real Burden *created by a Recorded Disposition.*

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling, now paid to me by B (*designation*), DO hereby **ASSIGN** and

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(a) Terms of a disposition held sufficient to transmit the personal obligation to disponent (*Wright's Trustees v. M'Laren*, 1891, 18 R. 841). Terms held insufficient (*Ritchie & Sturrock v. The Dullatur Feuing Co., Ltd.*, 1881, 9 R. 358; and *Carrick, &c. v. Rodger, Watt & Paul, &c.*, 1881, 9 R. 242).

(b) *University of Glasgow v. Yuill's Trustee*, 1882, 9 R. 643.

DISPONE to and in favour of the said B, and his executors (*or heirs, excluding executors*) and assignees whomsoever—(*in the first place*) a bond, dated , for the sum of £ sterling, granted by C (*designation*), in my favour, with interest from the (*specify date*); and (*in the second place*) the real and preferable lien and burden for payment of the sums contained in and due by said bond, and for said bond itself, created by a disposition, dated the day of , and recorded as after mentioned, granted by me in favour of the said C over the following lands and others thereby conveyed, viz., ALL AND WHOLE (*here describe or validly refer to the lands*), all as specified and described in the said disposition, recorded (*specify Register of Sasines and date of registration*): AND I have herewith delivered up the said bond: AND I assign all right which I may have to exhibition of the foresaid disposition.—IN WITNESS WHEREOF, &c.

As to the variations necessary where only a portion of the sum in the bond and of the relative real burden is assigned, and where the cedent is not the original creditor, see the forms as to Bonds and Dispositions in Security.

## 2. Assignment, or Disposition and Assignment, of a Ground-Annual.

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling now paid to me by B (*designation*), DO hereby SELL, ASSIGN, and DISPONE to and in favour of the said B, and his heirs and assignees whomsoever, heritably and irredeemably, NOT ONLY a free yearly ground-rent or ground-annual of £ sterling, to be uplifted and taken by the said B, in virtue of a Contract of Ground-Annual entered into between me, the said A, on the one part, and C (*designation*), on the other part, dated , and recorded (*specify Register of Sasines and date of registration*), furth of and from the subjects therein and hereinafter described (*or referred to*), or furth of any part or portion thereof, and readiest rents, maills, and duties of the same, commencing the first term's uplifting of said ground-annual at the term of next for the half-year preceding, and the next term's uplifting at thereafter, and so forth at the said two terms in all time coming, with the further sum of £ in name

of grassum at the term of \_\_\_\_\_, in the year 19\_\_\_\_, and at the same term in every \_\_\_\_\_ year thereafter, and with penalty, interest, and consequents of said ground-annual and grassum, all as specified in the said Contract of Ground-Annual, and herein held as repeated *brevitatis causa* with the said contract itself and whole clauses and obligations therein contained, and all actions, diligence, and execution competent thereon; but also ALL AND WHOLE (*here describe or validly refer to description of the subjects out of which the ground-annual is payable, adding—with the parts and pertinents thereof, and my whole right, title, and interest therein; and refer to any real burdens, conditions, &c., constituted by previous investitures or by the Contract of Ground-Annual itself, in the form of Schedule D of the Consolidation Act of 1868, or of Schedule H of the Conveyancing (Scotland) Act, 1874*); AND THAT IN REAL SECURITY to the said B and his foresaids of the foresaid yearly ground-rent or ground-annual, grassum, interest, and others before specified or referred to, and of the whole other payments or prestations, conditions, obligations, and others incumbent on the said C by the said Contract of Ground-Annual: WITH ENTRY at (*specify date*).—IN WITNESS WHEREOF, &c.

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#### SECTION X

### COMPLETION OF THE TITLE OF ASSIGNEES, GENERAL DISPONEES, EXECUTORS-NOMINATE, &c.

#### I. WHERE THE BOND HAS BEEN RECORDED, OR WHERE THE CEDENT, IF NOT THE ORIGINAL CREDITOR, HAS A RECORDED TITLE.

If the bond, or a Notarial Instrument thereon, in the form of which a style has been given at p. 328, *supra*, has been recorded, or where the cedent, if not the original creditor, has a recorded title, the title of a person acquiring right by assignation may be completed by registration of the assignation, with an ordinary warrant of registration thereon on his behalf in the appropriate Register of Sasines; but when the assignation is contained in any deed which it is not desired to record at length, the assignee's title will be completed (1) where the deed contains a clause of direction, by registration of the portions of the deed directed to be recorded, with a warrant of registration in the form of Schedule (F), No. 2, of the Consolidation Act of 1868; or (2) by expediting and recording with an ordinary warrant of registration a Notarial Instrument in the form of Schedule (H H) of the Consolidation Act.

**1. Notarial Instrument in favour of an Assignee to an Heritable Security, following on a Deed which it is not desired to record at length.**

*Sec. 124 and Schedule (H H), Consolidation Act of 1868.*

At there was on behalf of B (*designation*) presented to me, notary public subscribing, a Bond and Disposition in Security, dated and (*if recorded*) recorded in the (*specify Register of Sasines and date of registration ; or where sasine has been expedited thereon, say—and Instrument of Sasine thereon, recorded in the—specify Register of Sasines and date of registration as above*), granted by A (*designation*) in favour of C (*designation*): BY WHICH Bond and Disposition in Security the said A bound and obliged himself, his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said C, his executors (*or heirs excluding executors, as the case may be*) or assignees whomsoever, at the term of (*here insert date of payment*), the sum of £ sterling, with the interest of said principal sum at the rate of per centum per annum, and penalties in case of failure, therein expressed, all as the said Bond and Disposition in Security in itself more fully bears: AND IN SECURITY of the personal obligation therein contained, the said A disposed to and in favour of the said C and his foresaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*here insert the description of the subjects, and also all real burdens, &c., if any, all as set forth at full length or by reference in the bond*): AS ALSO there was presented to me an assignation (*or other conveyance or extract*), dated , granted by the said C, by which the said C assigned the said Bond and Disposition in Security (*if this be the case, add—and sasine thereon*), and sums of money and lands therein contained, to the said B, and his executors (*or heirs excluding executors, as the case may be*) and assignees whomsoever (*or otherwise, adopting in all cases the style of the assignation itself*): WHEREUPON this instrument is taken in the hands of L M (*insert name and designation of notary public*), in the terms of "The Titles to Land Consolidation" (Scotland) Act, 1868."—IN WITNESS WHEREOF, &c. (*complete testing clause as already shown in the case of Notarial Instruments*).

It will be observed that Schedule (H H) directs the personal obligation in the bond to be inserted only "*so far as necessary*;" and we see no objection to the practice, now common, of curtailing the narrative of the obligation, as we have accordingly done in the above example. Where the bond has not been recorded the obligation should be narrated *verbatim*, as shown in the style at p. 328, *supra*, of a Notarial Instrument proceeding on an unrecorded bond.

## 2. Notarial Instrument in favour of Trustees under a Marriage-Contract.

*Sec. 124 and Schedule (H H), Consolidation Act of 1868.*

AT there was on behalf of A, B, and C (*insert full designations of the several trustees*), trustees nominated in the Antenuptial Contract of Marriage hereinafter mentioned, entered into between X (*designation of husband*), on the one part, and Y (*designation of wife*), on the other part, presented to me, notary public subscribing, a Bond and Disposition in Security, dated (and if recorded), recorded in the (*specify Register of Sasines and date of registration*), granted by E (*designation*) in favour of F (*designation*), [*or if the bond has not been recorded, but sasine has been expedited thereon, say—*and Instrument of Sasine thereon, recorded in the (*specify Register of Sasines and date of registration*)]: BY WHICH Bond and Disposition in Security the said E bound and obliged himself, his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said F, his executors (*or heirs excluding executors, as the case may be*) or assignees whomsoever, at the term of (*insert date of payment*), the sum of £                      sterling, with the interest of said principal sum at the rate of £                      per centum per annum, and penalties in case of failure, as therein expressed, all as the said Bond and Disposition in Security in itself more fully bears: AND IN SECURITY of the personal obligation therein written, the said E disposed to and in favour of the said F and his foreshaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*here insert the description of the subjects, and also all real burdens, &c., if any, all as set forth at length or by reference in the bond*): AS ALSO there was presented to me an extract of the foresaid Antenuptial Contract of Marriage,

dated , and recorded in the Books of Council and Session the day of (or otherwise, as the case may be), entered into between the said X and Y, whereby, *inter alia*, the said X assigned the said Bond and Disposition in Security, and sums of money and lands (or subjects) therein contained, to and in favour of the said A, B, and C (*here insert the destination and other portions of assigning clause as in marriage-contract*), but that in trust always for the ends, uses, and purposes therein expressed: To WHICH Bond and Disposition in Security, sums of money, and lands and others therein contained, the said X acquired right, conform to the following writs, viz.—(First) Assignment, dated , and recorded in the (*specify Register of Sasines and date of registration*), granted by the said F in favour of the now deceased G (*designation*); (Second) Trust-Disposition and Settlement, dated , and (*if recorded*) recorded in the Books of Council and Session (*or other register, as the case may be*), the day of , granted by the said G in favour of N, O, and P (*designations*), and the survivors or survivor, acceptors or acceptor of them, and the heirs whomsoever of the last surviving acceptor, as trustees for the ends, uses, and purposes therein expressed; (Third) Notarial Instrument following on the said Bond and Disposition in Security and the general conveyance contained in the said Trust-Disposition and Settlement in favour of the said O and P, the only accepting trustees of the said G, recorded in the (*specify Register of Sasines and date of registration*); and (Fourth) Assignment, dated , and recorded in the (*specify Register of Sasines and date of registration*), granted by the said O and P, as accepting trustees fore-said, in favour of the said X: WHEREUPON this instrument is taken in the hands of L M (*insert name and designation of notary public*), in the terms of "The Titles to Land Consolidation (Scotland) Act, " 1868."—IN WITNESS WHEREOF, &c.

By the Conveyancing Act of 1874 (s. 53) it is provided that a grantee under a general disposition within the sense and meaning of the 19th section of the Consolidation Act, or any person deriving right from him, may complete a title to an heritable security belonging to the granter of such disposition, and in which such granter was infeft, by expeding and recording in the appropriate Register of Sasines a Notarial Instrument in such security in the form of Schedule (N) annexed to the Conveyancing Act.

### 3. Notarial Instrument in favour of Testamentary Trustees as General Disponees.

*Section 53 and Schedule (N) of the Conveyancing Act, 1874.*

At                    there was on behalf of N, O, and P (*insert full designations of the several trustees*), trustees nominated and appointed by the General Trust-Disposition and Settlement executed by the deceased C (*designation*), hereinafter mentioned, presented to me, notary public subscribing, a Bond and Disposition in Security, dated                   , and (*if recorded*) recorded in the (*specify Register of Sasines and date of registration*), granted by B (*designation*) in favour of the said C: BY WHICH Bond and Disposition in Security the said B bound and obliged himself, and his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said C, his executors (*or heirs excluding executors, as the case may be*) or assignees whomsoever, at the term of (*insert date of payment*), the sum of £                    sterling, with the interest of the said principal sum at the rate of £                    per centum per annum, and penalties in case of failure as therein expressed, all as the said Bond and Disposition in Security in itself more fully bears: AND IN SECURITY of the personal obligation therein written, the said B disposed to and in favour of the said C, and his foresaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*here insert description of subjects, and also all real burdens, &c., if any, all as set forth at length or by reference in the bond*): AS ALSO there was presented to me an extract of a Trust-Disposition and Settlement granted by the said C, dated                   , and recorded in the Books of Council and Session (*or other register, as the case may be*) the                    day of                   : BY WHICH Trust-Disposition and Settlement the said C assigned, disposed, devised, bequeathed, conveyed, and made over to and in favour of the said N, O, and P (*here insert the destination to the trustees, as contained in the Trust-Disposition and Settlement*), ALL AND SUNDRY his whole estate and effects, heritable and moveable, real and personal, of what nature soever and wheresoever situated, then belonging or that might belong to him at the time of his death, with the whole

vouchers and instructions, writs, titles, and securities thereof, and all that had followed or might be competent to follow thereon, but in trust always for the purposes specified in the said Trust-Disposition and Settlement (*or otherwise, as the case may be, in all cases using the language of the deed narrated*): IN WHICH general conveyance was included the said Bond and Disposition in Security, the said C being then vest therein as aforesaid [*if the trustor was not the original creditor, instead of "as aforesaid" here say—in virtue of the following writs, viz. (specify briefly the title or titles by which he acquired right, as shown in the preceding example)*]: WHEREUPON this instrument is taken in the hands of L. M (*insert name and designation*), notary public, in terms of "The Titles to Land Consolidation (Scotland) Act, 1868," and "The Conveyancing (Scotland) Act, 1874." — IN WITNESS WHEREOF, &c.

Prior to the Act of 1874 the title of a general disponent to a recorded Bond and Disposition in Security might have been made up by Notarial Instrument in the form of Schedule L or Schedule K K of the Consolidation Act of 1868, but Schedule (N) of the Act of 1874 is now the proper form for completing the title of testamentary and other trustees, and general disponents, or their assignees.

#### 4. Notarial Instrument in favour of Executors-Nominate.

##### *Section 64 of the Conveyancing Act of 1874.*

Where executors have not been excluded, their title may be completed by Notarial Instrument under section 64 of the Conveyancing Act of 1874 (*which is to be read as section 127 of the Consolidation Act of 1868*), and relative Schedule (K K) of the Consolidation Act.

At there was on behalf of N, O, and P (*insert designations of the executors*), executors nominated and appointed by the deceased B (*designation*) by his last will and testament (*or General Disposition and Settlement, or other testamentary writing, as the case may be*) after mentioned, presented to me, notary public subscribing, a Bond and Disposition in Security, dated , and (*where recorded*) recorded in (*specify Register of Sasines and date of registration*), granted by A (*designation*) in favour of the said B:

BY WHICH Bond and Disposition in Security the said A bound and obliged himself, and his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said B, his executors (*or as the case may be*) or assignees whomsoever, at the term of (*insert date of payment*), the sum of £                      sterling, with interest at the rate of                      per centum per annum, and penalties in case of failure, if incurred, as therein expressed, all as the said Bond and Disposition in Security in itself more fully bears: AND IN SECURITY of the personal obligation therein written, the said A disposed to and in favour of the said B and his foresaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*here insert description of the subjects, and also all real burdens, &c., if any, all as set forth at length or by reference in the bond*): AS ALSO there was presented to me an extract of the last will and testament (*or other testamentary writing, as the case may be*) granted by the said deceased B, dated                      , and recorded in the Books of Council and Session                      (*if necessary, e.g., if the bond and the testament are both dated before the Act of 1868, say—who died after the commencement of the “Titles to Land Consolidation (Scotland) Act, 1868”*), by which the said B nominated and appointed the said N, O, and P to be his executors: AS ALSO there was presented to me testament-testamentar of the said deceased B, granted by the Sheriff of the County of                      on the                      day of                      , whereby the said N, O, and P were confirmed executors-nominate of the said B, whereby the said N, O, and P, as executors foresaid, are now in right of the said Bond and Disposition in Security: WHEREUPON this instrument is taken in the hands of L M (*insert name and designation of notary public*), in the terms of “The Titles to Land Consolidation (Scotland) Act, “1868.”—IN WITNESS WHEREOF, &c.

Section 127 of the Consolidation Act (as amended) provides that it shall be competent for the executors “*duly confirmed*” to complete their title in the above form; and for this reason it is a frequent practice, though not required by Schedule (K K), to present to the notary and recite the confirmation as in the above style. It is a better practice, however, and will serve the same purpose, to commence the instrument in the following terms:—

AT                      there was on behalf of N, O, and P (*design executors*), and the survivors or survivor of them, executors nominated and

appointed by the deceased B (*designation*) by his last will and testament (*or other writing as the case may be*) after mentioned, and duly confirmed as such, conform to testament-testamentar of the said deceased B, granted by the Sheriff of the County of M in their favour, of date (*insert date*), presented to me, notary public subscribing, a Bond and Disposition in Security, &c. (*as in the preceding style*).

**5. Notarial Instrument in favour of a Legatee to whom a Bond and Disposition in Security has been Bequeathed.**

(*Section 64 of the Conveyancing Act, 1874 (which is to be read as section 127 of the Consolidation Act of 1868), and Schedule K K of the Consolidation Act.*)

AT there was on behalf of B (*as in preceding form*):  
 AS ALSO there was presented to me a Trust-Disposition and Settlement (*or other testamentary writing*), dated , granted by the said deceased C (*the creditor in the Bond and Disposition in Security*), by which the said C gave and bequeathed the said Bond and Disposition in Security and sums therein contained to the said B, whereby the said B is now in right of the said Bond and Disposition in Security: WHEREUPON, &c. (*as in preceding form*).

**6. Notarial Instrument in favour of the Trustee on a Sequestered Estate.**

*Section 25 and Schedule (L L), Consolidation Act, 1868.*

AT there was on behalf of N (*designation*), as trustee on the sequestered estate of B (*designation*) presented to me, notary public subscribing, a Bond and Disposition in Security, dated , and (*if recorded*) recorded in the (*specify Register of Sasines and date of registration*), granted by A (*designation*) in favour of the said B: BY WHICH Bond and Disposition in Security the said A bound and obliged himself, his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order,

to repay to the said B, his executors (*or as the case may be*) or assignees whomsoever, the sum of £                      sterling, with the interest of the said principal sum at the rate of £                      per centum per annum and penalties in case of failure, if incurred, as therein expressed, all as the said Bond and Disposition in Security in itself more fully bears: AND IN SECURITY of the personal obligation therein written, the said A disposed to and in favour of the said B and his foresaids, heritably, but redeemably, as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*here insert the description of the subjects, and all real burdens, &c., if any, all as set forth at length or by reference in the bond*): AS ALSO there was presented to me an extract Act and Warrant of Confirmation by the Sheriff-Substitute of the County of M (*or otherwise, as the case may be*) in favour of the said N, dated the                      day of                      19                      , whereby the said N, as trustee fore-said, has right to the said Bond and Disposition in Security (*if B is not the original creditor, here specify the title or titles by which he acquired right*): WHEREUPON this instrument is taken in the hands of L (*insert name and designation of notary public*), in the terms of "The Titles to Land Consolidation (Scotland) Act, 1868.—IN WITNESS WHEREOF, &c.

The same form, *mutatis mutandis*, will be used in completing the title of the liquidator of a joint-stock company. Under the Bankruptcy Acts and the Companies Acts, trustees on sequestrated estates and liquidators do not require to make up any title for the purpose of transferring lands; but there may be cases in which defective securities may be cut down by means of making up a title. In ordinary circumstances it is unusual, as a matter of practice, to make up titles.

**7. Notarial Instrument in favour of General Donees, where the Bond has been Partially Discharged and the Security for the Balance Restricted.**

*Schedule (N) of Conveyancing Act of 1874.*

AT                      there was on behalf of N, O, and P (*insert designations of the trustees*), trustees nominated and appointed by the deceased E (*designation*) by his general Trust-Disposition and

Settlement hereinafter mentioned, presented to me, notary public subscribing, a Bond and Disposition in Security, dated , and (if recorded) recorded in the (*specify Register of Sasines and date of registration*), granted by A (*designation*) in favour of B (*designation*): BY WHICH Bond and Disposition in Security the said A bound and obliged himself, and his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said B, his executors (*or as the case may be*) or assignees whomsoever, at the term of (*insert date of payment*), the sum of £                      sterling, with the interest of the said principal sum at the rate of                      per centum per annum and penalties in case of failure, if incurred, all as the said Bond and Disposition in Security in itself more fully bears: AND IN SECURITY of the personal obligation therein written the said A disposed to and in favour of the said B and his foresaids, heritably but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*here insert description of the subjects, and also all real burdens, &c., if any, all as set forth at length or by reference in the bond*): AS ALSO there was presented to me a Discharge and Deed of Restriction, dated , and recorded in the (*specify Register of Sasines and date of registration*), granted by the said B in favour of the said A, whereby the said B discharged the said Bond and Disposition in Security to the extent of the sum of £                      sterling, and corresponding interest and penalties, and declared to be redeemed and disburdened thereof, and of the infeftment following thereon, but that only to the extent foresaid, the subjects therein and hereinbefore described (*or referred to*): AND the said B did thereby further declare to be redeemed and disburdened thereof, and of the infeftment following thereon, absolutely and to the full extent of the said principal sum of £                      , interest and penalties foresaid, contained in said Bond and Disposition in Security, the following portions of the subjects therein and hereinbefore described (*or referred to*), viz., ALL AND WHOLE (*here describe or refer to the subjects wholly disburdened, as described or referred to in the Discharge and Deed of Restriction; or if the subjects disburdened are articulately described in the bond, say—* ALL AND WHOLE the subjects described in the first place in the said Bond and Disposition in Security, *or otherwise, as the case may be*): AND the said B did thereby restrict the security con-

stituted by said Bond and Disposition in Security for the balance of £                      of the said principal sum remaining due, and corresponding interest and penalties, to the following portion of the subjects therein and hereinbefore described (*or referred to*), viz., ALL AND WHOLE (*here describe or refer to the subjects to which the balance has been restricted, as described and referred to in the Discharge and Deed of Restriction; or if the subjects are also articulately described in the bond, say—*ALL AND WHOLE the subjects described in the second place in said Bond and Disposition in Security, *or otherwise, as the case may be*): AS ALSO there was presented to me an extract Trust-Disposition and Settlement by the said E, dated                      , and recorded in the Books of Council and Session the day of                      (*or in other register, as the case may be*), whereby the said E assigned, disposed, conveyed, devised, and bequeathed to and in favour of the said N, O, and P (*here insert the destination to the trustees as contained in the Trust-Disposition and Settlement*), ALL AND SUNDRY his whole estate and effects, heritable and moveable, real and personal, of what nature soever, and wheresoever situated, then belonging or that might belong to him at the date of his death, with the whole vouchers and instructions, writs, titles, and securities thereof, and all that had followed or might be competent to follow thereon, but in trust always for the ends, uses, and purposes specified in the said Trust-Disposition and Settlement: IN WHICH general conveyance was included the said Bond and Disposition in Security (and infeftment following thereon, *if infeftment was expedite*) to the extent of the said balance of £                      remaining due, and corresponding interest and penalties, if incurred, as restricted by the Discharge and Deed of Restriction hereinbefore narrated, the said E being then vest therein to the extent foresaid, in virtue of assignation, dated                      and recorded in the (*specify Register of Sasines and date of registration*), granted by the said B in favour of the said E: WHEREUPON this instrument is taken in the hands of M (*insert name and designation*), notary public, in terms of "The Titles to Land Consolidation" (Scotland) Act, 1868," and "The Conveyancing (Scotland) Act, 1874."—IN WITNESS WHEREOF, &c.

II. COMPLETION OF THE TITLE OF GENERAL DISPONEES, EXECUTORS-NOMINATE, LEGATEES, OR ASSIGNEES, WHERE THE BOND AND DISPOSITION IN SECURITY, OR THE CEDENT'S TITLE THERETO, HAS NOT BEEN RECORDED.

Where a heritable security from which executors are not excluded has not been constituted by infestment during the lifetime of the grantee, or where an assignation of such a security which has been constituted by infestment has not been completed by infestment during the lifetime of the assignee, and where such grantee or assignee shall be in life, at or subsequent to the commencement of the Act, such security or assignation shall form a warrant for an instrument in the form of Schedule M M, annexed to the Titles to Land Consolidation Act, 1868, in favour of the executors of the creditor, or in favour of the donees or assignees of such security, &c. See section 8 of the Titles to Land Consolidation Amendment Act, 1869.

It has been questioned whether the completion of title in terms of this section and relative schedule is competent in any case where the assignee has acquired right merely by an assignation in the ordinary form of Schedule (G G) of the Consolidation Act, 1868. That schedule is provided by section 124 of the Consolidation Act for the case "where an heritable security, whether dated before or after the passing of this Act (31st July 1868), has been constituted by infestment whether such infestment has been taken by recording the security or an instrument thereon, in the appropriate Register of Sasines in terms of this Act or any of the repealed Acts, or by any mode competent or in use prior to the 30th day of September 1847." It is argued that an assignation in terms of the statute can only be granted by a creditor infest, and that where the cedent is not the original creditor, and his title has never been completed by infestment, such assignation could not form a competent warrant for a Notarial Instrument unless it contained an express assignation of the writs by which he acquired right, *e.g.*, the general disposition or the unrecorded assignation (or series of assignations) in his favour, or at least a general assignation of writs. The objection has considerable weight, and is, we think, not altogether disposed of by the terms of Schedule (M M) of the Act of 1868, or of Schedule (N) of the Conveyancing Act of 1874. It is true that by both of these it appears to be contemplated that the party in whose favour the instrument is expedite may have right by a "series" of unrecorded titles, and that such titles of course may or may not be assignations in the ordinary form. But, on the other hand, the terms of the schedules do not exclude the view that the writs on which the instrument proceeds must be such as will validly transmit the security, according to the general principles of feudal conveyancing where not expressly modified by statute. In order to avoid any question on this ground, therefore, an assignation by a party who has himself no recorded title should in every case expressly assign the writs by which he acquired right to the security assigned, or at all events should contain a general assignation of writs.

**1. Notarial Instrument in favour of the General Disponee of a Creditor in Right of an Heritable Security which has not been completed by Infeftment during the Grantee's Life.**

AT                    there was on behalf of C (*designation*), presented to me, notary public subscribing, a Bond and Disposition in Security granted by A (*designation*), and dated (*insert date*): BY WHICH Bond and Disposition in Security the said A bound and obliged himself to repay to B (*designation*), his executors (*or heirs excluding executors, as the case may be*) or assignees whomsoever (*here insert the remainder of the personal obligation and the disposition of the lands, &c., in security, with the description of these, and also all real burdens, &c., if any, all as set forth at full length or by reference in the Bond and Disposition in Security*): AS ALSO there was presented to me a General Disposition and Settlement granted by the said B, dated                    (*or other deed or extract, as the case may be*): BY WHICH General Disposition and Settlement the said B assigned and disposed, conveyed, bequeathed, and made over to and in favour of the said C, in the event of his surviving the said B, whom failing as therein mentioned, ALL AND SUNDRY his whole estate and effects, heritable and moveable, real and personal, of what kind or nature soever and wheresoever situated, then belonging or that might belong to him at the date of his death, with the whole vouchers and instructions, writs, titles, and securities thereof, and all that had followed or might competently follow thereon, whereby the said C is now in right of the said heritable security: WHEREUPON this instrument is taken in the hands of L (*insert name and designation of notary public*), in the terms of "The Titles to Land Consolidation (Scotland) Act, 1868."—IN WITNESS WHEREOF, &c.

A similar form will be adopted in the case of testamentary trustees or executors-nominate, or of a special legatee; and where the parties (being more than one), whatever their character, in whose favour the instrument is expedite, are not entitled to the security "wholly for their own beneficial interest," it is competent, in terms of section 130 of the Consolidation Act, to take the instrument "in favour of such executors or disponees or assignees, and the survivors or survivor of them, unless such a destination be expressly excluded by the terms of the conveyance or deed or writing" on which the instrument proceeds.

In the case of a special legatee the instrument will proceed as follows:—

AS ALSO there was presented to me a General Disposition and Settlement granted by the said B, and dated (or other deed or extract, as the case may be), whereby, *inter alia*, the said B assigned, disposed, and bequeathed to the said C in the event of his surviving the said B, whom failing as therein mentioned (or otherwise, as the case may be), the said Bond and Disposition in Security, and sums of money, lands, and others therein contained: WHEREUPON, &c. (as before).

In the case of a special assignee the instrument will proceed as follows:—

AS ALSO there was presented to me an assignation, dated , granted by the said B, whereby he assigned and disposed to the said C, and his executors (or heirs excluding executors, as the case may be) and assignees whomsoever, the fore-said Bond and Disposition in Security, with interest from the (specify date), and also ALL AND WHOLE the lands and others therein and hereinbefore described (or referred to) [adding, if there are any real burdens or conditions—but always with and under the real burdens, conditions, &c., before specified (or referred to or otherwise, as the case may be)]: WHEREUPON, &c.

## 2. Notarial Instrument in favour of the Executors of an Assignee whose Right has not been Completed by Infeftment.

AT there was on behalf of N, O, and P (designations) (if desired, and in the circumstances competent, add—and the survivors or survivor of them), executors duly confirmed of the deceased C (designation), nominated and appointed by his last will and testament after mentioned, presented to me, notary public subscribing, an assignation granted by B (designation), and dated the day of : BY WHICH assignation the said B assigned and disposed to the said C, and his executors and assignees whomsoever, a Bond and Disposition in Security, dated the day of , and recorded in the (specify

*Register of Sasines and date of recording*), for the sum of £ sterling, granted by A (*designation*) in favour of the said B, with interest from the (*insert date*), and also ALL AND WHOLE (*insert or refer to the description of the lands, and specify or refer to all real burdens, &c., if any, all as contained in the assignation*): AS ALSO there was presented to me last will and testament executed by the said C, and dated the                      day of                      [*or an extract of the last will and testament granted by the said C, dated (insert date), and recorded in the Books of Council and Session the                      day of                      (or other writ or extract, as the case may be)*], whereby the said C nominated and appointed the said N, O, and P, and the survivors or survivor of them, to be his executors or executor, and bequeathed to them and their foresaids his whole moveable and personal means and estate, then belonging to him, or which might belong to him at the date of his death, subject always to the uses, ends, and purposes, and with the powers, therein expressed: AS ALSO there was presented to me testament-testamentar by the Sheriff of the County of M, dated                      , whereby the said N, O, and P were confirmed executors-nominate of the said deceased C: WHEREUPON this instrument is taken in the hands of L (*insert name and designation of notary public*), in the terms of the "Titles to Land Consolidation" (Scotland) Act, 1868."—IN WITNESS WHEREOF, &c.

In the case of a Bond and Disposition in Security or other security in favour of heirs excluding executors, &c., or where the creditor has died before 31st December 1868, infettment will be taken in favour of the heir, and the instrument will conclude thus:—

As ALSO there was presented to me extract Decree of the General (*or Special*) Service of the said                      as heir (*specify character in which served*) of the said                      (*here specify date, and date of recording in Chancery*): WHEREUPON, &c., as before.

In all such instruments, whether proceeding on an unrecorded Bond and Disposition in Security, or unrecorded transmissions of duly recorded securities, where the person or persons in whose favour the instruments are expedite are not themselves the original grantees in the bond or assignation, as the case may be, but have acquired right by an unrecorded transmission or series of such transmissions, the whole writs by which they have acquired right must bear to be presented to the notary by whom the instrument is expedite.

**3. Notarial Instrument in favour of the Assignee of a General Disponee in Right of a duly constituted Heritable Security, but whose Title has not been Completed.**

*Conveyancing Act, s. 53, Schedule (N).*

AT there was on behalf of G (*designation*) presented to me, notary public subscribing, a Bond and Disposition in Security, dated [*insert date, and if recorded, say—and recorded in the (specify Register of Sasines and date of registration)*], granted by A (*designation*) in favour of B (*designation*): BY WHICH Bond and Disposition in Security the said A bound and obliged himself, and his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said B, his executors (*or heirs excluding executors, as the case may be*) or assignees whomsoever, at the term of (*insert date of payment*), the sum of £                      sterling, with interest and penalties if incurred, as therein specified, all as the said Bond and Disposition in Security, here held as repeated *brevitatis causa*, in itself more fully bears: AND IN SECURITY of the personal obligation therein written the said A thereby disposed to and in favour of the said B and his foresaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*here insert or refer to the description of the lands, and specify or refer to all real burdens, &c., if any, set forth at full length or by reference in the Bond and Disposition in Security*): AS ALSO there was presented to me a General Disposition and Settlement granted by the said B, and dated the                      day of                      [*if an extract, state this, and add here—and recorded in the (specify register and date of recording)*]: BY WHICH General Disposition and Settlement the said B assigned and disposed to and in favour of his wife C, in the event of her survivance, whom failing as therein mentioned, his whole estate and effects, heritable and moveable, real and personal, then belonging, or which should belong, to him at the date of his death, and constituted the said C, whom failing as therein mentioned, his sole and universal legatory, in which general conveyance was included the said Bond and Disposition in Security (and infeftment following thereon, *if infeftment was expedie*), the said B being at the time of his death vest therein as aforesaid: AS ALSO there were

presented to me the following writs, whereby the said G acquired the said general disponee's right to the said Bond and Disposition in Security (and infeftment following thereon, *if infeftment was expedite*), viz.—(*First*) Assignment granted by the said C, then widow of the said B, and dated the                      day of                      , whereby the said C assigned and disposed to and in favour of her daughters, D, E, and F (*designations*), then residing with her, and the survivors and survivor of them, and the executors and assignees whomsoever of the survivor, the said Bond and Disposition in Security, with interest from the (*insert date*); and also ALL AND WHOLE the lands and others therein and hereinbefore described (*or referred to*) [*and if real burdens, &c., add—but always with and under the real burdens, conditions, provisions, and declarations (if any) before specified (or referred to)*]; and by which assignment the said C also assigned the writs, and particularly the said General Disposition and Settlement, in so far as necessary to enable them to complete a title to the Bond and Disposition in Security; and (*Second*) Assignment granted by the said D and E, who survived their said sister F, dated the                      day of                      , whereby they assigned and disposed to and in favour of the said G and his executors (*or heirs excluding executors, as the case may be*) and assignees whomsoever, the said Bond and Disposition in Security, with interest from the (*insert date*), and also ALL AND WHOLE the lands as therein and hereinbefore described (*or referred to*) [*and where real burdens, &c., add—but always with and under the real burdens, conditions, provisions, and declarations before specified (or referred to)*]: And they also assigned the writs, and particularly the foresaid General Disposition and Settlement by the said B, in so far as necessary to enable the said G to complete a title to the Bond and Disposition in Security: WHEREUPON this instrument is taken in the hands of L (*insert name and designation*), notary public, in terms of “The Titles to Land Consolidation (Scotland) Act, 1868,” and “The Conveyancing (Scotland) Act, 1874.”—IN WITNESS WHEREOF, &c.

Where the granter of the general disposition is not the original creditor the preceding form will be modified as follows:—After the narrative of the general disposition, proceed—

IN which general conveyance was included the said Bond and Disposition in Security (and infeftment following thereon, *if infeft-*

*ment was expedé*), the said B being at the time of his death vest therein in virtue of the following writs, viz. (*here specify shortly the recorded writs by which he acquired right, as shown in Style No. 7, p. 354, supra*): AS ALSO there was presented to me the following writs whereby the said G acquired the said general disponent's right to the said Bond and Disposition in Security (and infeftment following thereon, *if infeftment was expedé*), viz.—(*First*) (*here specify the writs as in Form 3*).

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## SECTION XI

### COMPLETION OF ASSIGNEE'S TITLE TO REAL BURDENS

By the law as it stood prior to the Conveyancing Act of 1874 it was unnecessary to record the assignation of a real burden in the Register of Sasines, intimation to the debtor being all that was essential to complete the assignee's right. Now, in consequence of the provisions of section 30 of the above Act, intimation, though still sufficient in any question with the debtor, is not necessary, and registration of the assignation constitutes the criterion of preference in competition with third parties, the Act providing that the deed, instrument, or writing by which real burdens are assigned, conveyed, or transferred "shall take effect in competition with "third parties only from the date of such registration, and intimation "according to the existing law and practice shall be unnecessary when "such deed, instrument, or writing is recorded."

The title of the assignee will therefore be completed by the registration of the assignation with a warrant of registration thereon in the appropriate Register of Sasines.

When it is desired not to record the assignation itself, or where that would be incompetent in respect of the cedent's own title not being recorded, the assignee's title may be completed by expediting and recording a Notarial Instrument in the form applicable in similar circumstances to an ordinary heritable security. As, however, the deed constituting the real burden frequently forms part of the debtor's title, and it may not be possible therefore to obtain delivery for the purpose of presenting it to the notary, the same section of the Conveyancing Act (s. 30) provides, "That where a real burden upon land shall have been assigned, conveyed, "or transferred by any deed, instrument, or writing which has entered "the appropriate Register of Sasines, it shall not be necessary to produce "to the notary public expediting any notarial instrument applicable to such "real burden, or to set forth in such notarial instrument, as a warrant "thereof, the deed, instrument, or writing constituting the said real "burden; but it shall be sufficient to produce to him, and to specify "shortly in such notarial instrument, the deed, instrument, or writing, "or the deeds, instruments, or writings, whereby the said real burden "shall have been assigned, conveyed, or transferred, and which, or one

"or more of which, if there are more than one, shall have entered the appropriate Register of Sasines."

Unfortunately the exact meaning of the clause in the above section is rendered doubtful by the fact that a recorded Notarial Instrument, which may form the cedent's title, does not properly fall under the description of a "deed, instrument, or writing" by which a real burden on land has been "assigned, conveyed, or transferred." If such an instrument, therefore, is the only recorded deed intervening between the original creditor and the assignee whose title it is proposed to complete by Notarial Instrument, it may be well to avoid any risk of challenge, and to make such new instrument proceed (as in the case of an instrument proceeding on a bond) on the production of the original deed of constitution as well as of the subsequent links.

**1. Notarial Instrument in favour of an Assignee to a Real Burden**  
*where no previous Transmission has been Recorded.*

*Consolidation Act, Schedule (H H), and Conveyancing Act, s. 30.*

At                    there was on behalf of A (*designation*) presented to me, notary public subscribing, a disposition, dated the                    day of                   , and recorded in the (*specify Register of Sasines and date of registration*), granted by B (*designation*) in favour of C (*designation*): BY WHICH disposition the said B disposed to the said C, and his heirs or assignees whomsoever, heritably and irredeemably, ALL AND WHOLE (*here insert description of subjects, or refer to them as set forth at full length or by reference in the disposition*), with the parts and pertinents thereof, and his, the said B's, whole right, title, and interest therein (*here insert any reference to real burdens, conditions, &c., previously constituted, as in the disposition produced*): BUT DECLARING ALWAYS, as it was by said disposition expressly PROVIDED and DECLARED, that the said subjects were disposed with and under the real burden of the sum of £                    sterling, payable to the said B, his executors or assignees, at the term of                   , being part of the price thereof remaining unpaid by the said C, with interest thereon at the rate of £5 per cent. per annum from the term of                    during the not-payment, and a fifth part more of the said principal sum of liquidate penalty in case of failure in punctual payment, all conform to bond of even date with said disposition granted by the said C to the said B: AND WHICH SUM of £                    sterling, interest and penalty as aforesaid, were by said disposition declared a real

and preferable burden upon and affecting the subjects thereby disposed, and were appointed to be inserted in any notarial or other instrument to follow thereon, and to be inserted or validly referred to in all future deeds of transmission, decrees, instruments, and other writs of or relating to the said subjects or any part thereof, so long as the said burden or any part thereof should remain unpaid, otherwise such deeds, decrees, instruments, and writs should be null and void: AS ALSO there was presented to me an assignation, dated the                      day of                      , granted by the said B in favour of the said A, by which the said B assigned and disposed to and in favour of the said A and his executors (*or heirs excluding executors, as the case may be*) and assignees whomsoever (*in the first place*) a bond, dated the                      day of                      , granted by the said C in his, the said B's, favour for the sum of £                      sterling, and interest and penalties corresponding thereto, being the bond referred to in the said disposition before narrated; and (*in the second place*), the real and preferable lien and burden for payment of the said sum of £                      , declared and constituted by the disposition before narrated, over ALL AND WHOLE the subjects therein and hereinbefore described, with interest from the                      day of                      : WHEREUPON this instrument is taken in the hands of L M (*insert name and designation of notary public*), in the terms of "The Titles to Land Consolidation" (Scotland) Act, 1868," and "The Conveyancing (Scotland) Act, 1874." —IN WITNESS WHEREOF, &c.

Where the cedent's title has been completed by the registration of the assignation in his favour, the instrument in favour of his assignee will proceed (1) on the recorded assignation, which it will narrate at length, and (2) on the subsequent transmissions.

## 2. Notarial Instrument completing the Title of Testamentary Trustees to a Ground-Annual.

### *Schedule (N) of the Conveyancing Act, 1874.*

At                      there was on behalf of N, O, and P (*designations*), trustees of the deceased A (*designation*), nominated and appointed by his Trust-Disposition and Settlement hereinafter mentioned, presented to me, notary public subscribing, a Contract of Ground-Annual entered into between the said A, heritable proprietor of

the area of ground therein disposed, OF THE FIRST PART, and B (*designation*), OF THE SECOND PART, dated the            day of            , and recorded with Warrants of Registration thereon on behalf of the said A and of the said B respectively, in the (*specify Register of Sasines and date of registration*): BY WHICH Contract of Ground-Annual the said A sold and disposed, to and in favour of the said B, and his heirs and assignees whomsoever, heritably and irredeemably, ALL AND WHOLE that area of ground (*here describe the ground disposed, as in the contract*), with the pertinents thereof, and his, the said A's, whole right, title, and interest therein (*here insert reference to real burdens, conditions, &c., already constituted, if any, as in the contract*): AND DECLARING THEREBY that the said Contract of Ground-Annual was granted, and the said area of ground disposed, with and under the real and preferable lien and burden of the payment by the said B and his foresaids to the said A and his heirs and assignees whomsoever, of the yearly ground-annual of £            sterling, to be uplifted and taken by the said A and his foresaids furth of and from the said area of ground therein disposed, and whole houses and buildings erected or to be erected thereon, or furth of any part or portion thereof, and readiest rents, maills, and duties of the same, and that at two terms in the year, &c. (*here insert the specification of the termly payments, interest, and penalties, and periodical grassum or duplication, as in the contract*): AND DECLARING FURTHER that the said area of ground was thereby disposed to the said B and his foresaids with and under the additional burdens, declarations, conditions, obligations, and others specified in the said Contract of Ground-Annual recorded as aforesaid: FOR WHICH CAUSES, and ON THE OTHER PART, the said B thereby bound himself and his foresaids to make payment to the said A and his foresaids of the foresaid ground-annual of £            sterling for the said area of ground, payable at the terms, and with grassums (*or duplications*), interest, and penalties, all as therein and hereinbefore specified, and to perform the whole other prestations, conditions, and obligations incumbent on him and his foresaids under the said Contract of Ground-Annual: AND for further security to the said A and his foresaids of the payment of the said ground-annual, grassums, interest, and consequents before specified, and performance of the said prestations, obligations, and conditions effeiring thereto, the said B, without prejudice to, but in corroboration of, the right of

the said A and his foresaids, in virtue of the burdens and conditions under which the said area of ground was disposed, and of the before-narrated personal obligation, thereby assigned, disposed, and made over to and in favour of the said A and his foresaids, not only ALL AND WHOLE a yearly ground-annual of £                      sterling, to be paid to and uplifted by him and his foresaids furth of and from ALL AND WHOLE the area of ground thereinbefore disposed, and buildings erected or to be erected thereon, and that at the terms, and with grassums, interest, and penalties, all as therein and hereinbefore specified, but also ALL AND WHOLE the said area of ground and buildings erected or to be erected thereon, bounded and described as aforesaid, and whole rents, maills, and duties thereof, but always with and under the whole reservations, burdens, conditions, and others therein and hereinbefore referred to: AND THAT IN REAL SECURITY to the said A and his foresaids of the payment of the said yearly ground-annual, half-yearly payments thereof, grassums, interest, and penalties, all as therein and before mentioned, and of performance of the obligations and prestations applicable thereto, in so far as incumbent on the said B and his foresaids by the said Contract of Ground-Annual: AS ALSO there was presented to me an extract of a Registered Trust-Disposition and Settlement granted by the said A, dated the                      day of                      , and recorded in the Books of Council and Session the                      day of                      (*or other writ or extract as the case may be*): BY WHICH Trust-Disposition and Settlement the said A assigned, disposed, conveyed, made over, devised, and bequeathed to and in favour of the said N, O, and P (*here insert destination to trustees, &c., as in the settlement*), ALL AND SUNDRY his whole means, estate, and effects, heritable and moveable, real and personal, then belonging or which might belong to him at the date of his death, with the whole writs, vouchers, and instructions thereof, and all that had followed or could competently follow thereon, but in trust always for the ends, uses, and purposes therein mentioned: IN WHICH general conveyance were included the said ground-annual of £                      sterling, interest, grassums, and consequents, the said A being then and at the date of his death vest therein as aforesaid: WHEREUPON this instrument is taken in the hands of L M (*insert name and designation*), notary public, in terms of "The Titles to Land Consolidation (Scotland) Act, 1868," and "The "Conveyancing (Scotland) Act, 1874."—IN WITNESS WHEREOF, &c.

## SECTION XII

COMPLETION OF TITLE OF HEIRS AND EXECUTORS-  
DATIVE OF A CREDITOR DYING INTESTATE

## I. TITLE OF HEIRS.

In cases where the heir of the creditor is entitled to succeed, he, if the security has been constituted by infektment, may complete his title—(1) by obtaining from the debtor a writ of acknowledgment in his favour, in the form of Schedule (II.) of the Consolidation Act of 1868 (section 125, as amended by section 63 of the Conveyancing Act of 1874), and recording this with Warrant of Registration in the appropriate Register of Sasines; or (2) by obtaining a Decree of Special Service, and recording the extract thereof with Warrant of Registration in like manner<sup>(a)</sup>; or (3) by obtaining a Decree of General Service and expeding thereon, and recording a Notarial Instrument in the form of Schedule (J J) of the Consolidation Act (section 128 of that Act).

If the bond has not been completed by infektment, or if the creditor is an assignee who has not completed his title by infektment during his life, the heir will complete a title by obtaining a Decree of General Service and expeding thereon, and recording a Notarial Instrument in the form of Schedule (M M) of the Consolidation Act, s. 130.

**1. Writ of Acknowledgment in favour of the Heir of the Creditor in a Bond and Disposition in Security constituted by Infektment from which Executors are Excluded.**

*Schedule (II.) and section 125 of the Consolidation Act of 1868,  
and section 63 of the 1874 Act.*

I, A (*name and design debtor in the security*), hereby ACKNOWLEDGE C (*designation*), as eldest son (*or otherwise, as the case may be*) and heir of the deceased B (*designation*), to be in right of a Bond and Disposition in Security, dated the            day of           , and recorded in the (*specify Register of Sasines and date of registration*), for the sum of £            sterling, granted by me in favour of the said B and his heirs, excluding executors, or assignees whomsoever [*or in favour of the said B and his executors or assignees whomsoever, but from which Bond and Disposition in Security the*

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<sup>(a)</sup> Heirs of a destination in a heritable bond may complete title by service (*Hare*, 1889, 17 R. 105).

executors of the said B were excluded, conform to Minute of Exclusion executed by him of date the                      day of                      , and recorded in the (*specify Register of Sasines and date of registration*), over ALL AND WHOLE (*here describe or refer to the lands in terms of Schedule (O) of the Conveyancing Act of 1874, and specify or refer to real burdens, conditions, &c., if any, in terms of Schedule (D) of the Consolidation Act of 1868*).—IN WITNESS WHEREOF, &c.

The grantor of the writ of acknowledgment must at the date of granting be infeft in the lands which form the subject of the security, and may either be the original debtor in the bond or his successor in the lands. If the deceased is not the original creditor, the titles by which he acquired right will be specified immediately after the description of the lands and reference to real burdens, as shown in the following style:—

**2. Writ of Acknowledgment** *in favour of the Heir-Male of the last Survivor of the Trustees under a Contract of Marriage.*

I, A (*designation*), hereby ACKNOWLEDGE B (*designation*), as the eldest son and nearest and lawful heir-male of provision of the deceased C (*designation*), who was the last survivor of the trustees under the Contract of Marriage after mentioned, to be in right, but only as trustee for the purposes mentioned in said Contract of Marriage, of a Bond and Disposition in Security, dated the                      day of                      , and recorded in the (*specify Register of Sasines and date of registration*), for the sum of £                      , granted by me in favour of the deceased D (*designation*), and his executors (*or heirs excluding executors, as the case may be*) or assignees whomsoever, over ALL AND WHOLE (*here describe or refer to description of the lands, and specify or refer to real burdens, conditions, &c., if any, as directed in the preceding style*): To WHICH Bond and Disposition in Security, sums of money thereby due, and lands and others therein contained, the said C acquired right, conform to the following titles, viz.—(*First*) Decree of General Service in favour of E (*designation*), eldest son of the deceased F (*designation*), who was the only son of the said deceased D, as nearest and lawful heir of the said D, his grandfather, obtained before the Sheriff of M on the                      day of                      , and recorded in Chancery on the                      day of                      ; (*Second*) Notarial Instrument thereon in favour of the said E as heir foresaid,

recorded in the (*specify Register of Sasines and date of registration*); (Third) Contract of Marriage between the said E on the one part, and G (*designation*) on the other part, dated the       day of       , whereby, *inter alia*, for the causes therein specified, the said E assigned, disposed, conveyed, and made over to H, I (*designations*), and the said C, and to such other person or persons as might be assumed in virtue of the powers thereby conferred, and to the acceptors and acceptor, survivors and last survivor, of the trustees thereby named and to be assumed as aforesaid, and to the nearest heir-male of the last survivor, as trustees for the purposes therein mentioned, *inter alia*, the said Bond and Disposition in Security, and also ALL AND WHOLE the lands and others before described; and (Fourth) Notarial Instrument expedite on said Contract of Marriage in favour of the said H, I, and C, as trustees foresaid, and the survivors and survivor of them, recorded in the (*specify Register of Sasines and date of registration*).—IN WITNESS WHEREOF, &c.

**3. Petition of Special Service as Heir of Creditor in Recorded Bond and Disposition in Security from which Executors are Excluded.**

*Schedule (Q), Consolidation Act of 1868.*

Unto the Honourable the Sheriff of the County of M (*specify County, or say—of Chancery*), the Petition of C (*designation*),

Humbly sheweth,

That the late B (*designation*) died on or about the day of       in the year       , last vest and seised in ALL AND WHOLE (*here describe or refer to the lands in terms of Schedule (O) of the Conveyancing Act of 1874*); AND THAT IN REAL SECURITY of the whole sums of money—principal, interest, and penalties—contained in a Bond and Disposition in Security, dated the       day of       , in the year       , and recorded in the (*specify Register of Sasines and date of registration*), for the sum of £       sterling, granted by A (*designation*), in favour of the said deceased B, and his heirs, excluding executors or assignees whomsoever [*or in favour of the said B, and his executors or assignees*]

whomsoever, but from which Bond and Disposition in Security the executors of the said B were excluded by Minute of Exclusion executed by him of date the                      day of                      , and recorded in the (*specify Register of Sasines and date of registration*), conform to the said Bond and Disposition in Security, dated and recorded as aforesaid, but always with and under the real burdens, conditions, provisions, and limitations (*if any*) specified in a (*here specify the deed or instrument containing the real burdens, conditions, &c., at length, in terms of Schedule (D) of the Consolidation Act of 1868*).

That the petitioner is the eldest son (*or state what other relationship or character the petitioner bears*), and nearest lawful heir in special of the said B in the lands and others foresaid, in which the said B was last vest and seised in security as aforesaid.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in special of the said deceased B in the lands and others above described, and that in real security of the sums of money—principal, interest, and penalties—contained in the said Bond and Disposition in Security, but always with and under the real burdens, conditions, provisions, or limitations (*if any*) above referred to.

According to Justice, &c.

(*Signed by the petitioner  
or his mandatory.*)

For variations in style arising from different circumstances the conveyancer is referred to Title V., the forms in which will be suitable, *mutatis mutandis*, to the case of Special Service to a security. The heir's title under the decree obtained on the above petition will be completed either by registration of the Extract Decree itself, with a warrant of registration thereon, in the appropriate Register of Sasines, or by expeding and recording in like manner a Notarial Instrument in the following form:—

**4. Notarial Instrument in favour of the Heir of a Creditor in an Heritable Security proceeding on a Recorded Bond and Disposition in Security, with Minute of Exclusion of Executors and Extract Decree of Special (or General) Service.**

*Section 128, Schedule (J J), Consolidation Act of 1868.*

AT there was on behalf of C (*designation*), presented to me, notary public subscribing, a Bond and Disposition in Security, dated , and (*if recorded*) recorded in the (*specify register of Sasines and date of registration*), granted by A (*designation*) in favour of the now deceased B (*designation*); [*if the bond has not been recorded, but sasine expedé thereon, say—*and Instrument of Sasine thereon, recorded in the (*specify Register of Sasines and date of registration*)]: BY WHICH Bond and Disposition in Security the said A bound and obliged himself, and his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said B, and his heirs, excluding executors, or assignees whomsoever (*or to the said B and his executors or assignees whomsoever, as the case may be*), the sum of £ sterling, at the term of (*insert date of repayment*), with a fifth part more of liquidate penalty in case of failure, and interest of said principal sum at the rate of per centum per annum, and penalties in case of failure in the punctual payment of said interest, all as the said Bond and Disposition in Security in itself more fully bears: AND IN SECURITY of the personal obligation therein written, the said A disposed to and in favour of the said B and his foresaids, heritably, but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, ALL AND WHOLE (*here insert the description of the subjects, and also all real burdens, &c., if any, all as set forth at length or by reference in the security*); [*if the security was originally conceived in favour of B, "and his executors or assignees whomsoever," and the executors afterwards excluded by minute, the Minute of Exclusion should be presented, and here narrated, as follows—*AS ALSO there was presented to me a Minute of Exclusion granted by the said B, dated the , and recorded (*specify Register of Sasines and date of registration*), whereby the said B excluded executors from the Bond and Disposition in Security before narrated]: AS ALSO there was presented to me an Extract Decree of Special (*or General*) Service in

favour of the said C as eldest lawful son (*or otherwise, as the case may be*) and nearest lawful heir in special (*or general*) of the said B, dated \_\_\_\_\_, expedé before the Sheriff of the County of M (*or of Chancery*), and recorded in Chancery the \_\_\_\_\_ day of \_\_\_\_\_, whereby the said C acquired right to the said Bond and Disposition in Security: WHEREUPON this instrument is taken in the hands of L (*insert name and designation of notary public*), in terms of "The "Titles to Land Consolidation (Scotland) Act, 1868."—IN WITNESS WHEREOF, &c.

The variations necessary where the deceased is not the original creditor have been exemplified in preceding styles.

Where the security excludes executors, and the deceased has not been infert therein, the title of the heir will be completed by General Service and expeding a Notarial Instrument in the form of Schedule (M M) of the Consolidation Act, and recording it with warrant of registration in the appropriate Register of Sasines. Form 1, p. 358, *supra*, is applicable in this case, the General Service being substituted for the General Disposition and Settlement on which that form proceeds.

## II. TITLE OF EXECUTORS-DATIVE.

If the executors of the creditor are entitled to succeed their title will, in terms of section 126 of the Consolidation Act of 1868, be completed by the registration of a Notarial Instrument in the form of Schedule (J J) of that Act—the same form as that provided for the case of an heir whose executors have been excluded (see p. 372), and differing only in proceeding on the testament-dative instead of the Decree of Special or General Service. The testament-dative will be narrated thus:—

AS ALSO there was presented to me testament-dative of the said deceased B, expedé before the Sheriff of the County of M, on the \_\_\_\_\_ day of \_\_\_\_\_, whereby the said C was ordained and confirmed executor-dative of the said deceased B; whereby the said C acquired right to the said Bond and Disposition in Security: WHEREUPON, &c.

Where the title of the executors consists of letters of administration obtained in England, the instrument may proceed on these as produced and sealed in the Commissary Court in terms of the Confirmation Act of 1858, instead of the testament-dative. Such letters when so produced have the effect of confirmation, and in practice it is understood that a title made up in this way is quite valid, though the Consolidation Act does not expressly refer to letters of administration.

If the executors are more than one, and are not entitled to the deceased's moveable estate wholly for their own beneficial interest, the Act provides that "it shall be competent to take such Notarial Instrument in favour of the said executors and the survivors or survivor of them."

When the security has not been completed by infettment in the creditor's lifetime, and executors are not excluded, the title of the executors will be completed in terms of section 130 of the Consolidation Act, by expeding a Notarial Instrument in the form of Schedule (M M) of the Act, and recording this, with warrant of registration thereon, in the appropriate Register of Sasines. Form 1, p. 358, *supra*, applies to this case, the testament-dative being substituted for the General Disposition and Settlement.

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### SECTION XIII

#### EXTINCTION AND RESTRICTION OF HERITABLE SECURITIES AND SIMILAR RIGHTS

##### 1. Discharge of Bond and Disposition in Security by the Original Creditor.

(Section 132 and Schedule (NN), Consolidation Act, 1868.)

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling now paid to me by B (*designation*), DO HEREBY DISCHARGE a Bond and Disposition in Security (*or other security*), dated the day of (*if recorded, say*) and recorded in the (*specify Register of Sasines and date of recording*), for the sum of £ sterling, granted by the said B in my favour (*or as the case may be*), and all interest due thereon: AND I DECLARE to be redeemed and disburdened thereof, and of the infettment following thereon, ALL AND WHOLE (*describe or validly refer to the lands as in security*), all as specified and described in the said Bond and Disposition in Security, dated and recorded as aforesaid.—IN WITNESS WHEREOF, &c.

##### 2. Discharge of Bond and Disposition in Security to which the Holder has acquired Right.

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling now paid to me by B (*designation*), DO hereby DISCHARGE a Bond and Disposition in Security (*or other security, as the case may be*), dated the day of , and recorded (*insert date of recording and Register of Sasines*), for the sum of £ sterling granted by G (*designation*), in favour of H

(*designation*), and all interest due thereon: AND I DECLARE to be redeemed and disburdened thereof, and of the infetment following thereon, ALL AND WHOLE (*insert or validly refer to the description of the subjects*), all as specified and described in the said Bond and Disposition in Security (*or as the case may be*), dated and recorded as aforesaid: To WHICH Bond and Disposition in Security (*or as the case may be*), sums of money therein contained, and subjects (*or lands and others*) thereby conveyed, I acquired right, conform to the following writs, viz.—(*First*) Assignment granted by the said H in favour of K (*designation*), dated \_\_\_\_\_ and recorded (*specify Register of Sasines and date of recording*); (*Second*) Trust-Disposition and Settlement by the said K, dated the \_\_\_\_\_ day of \_\_\_\_\_ (*if recorded, say*) and recorded in (*specify Register and date of recording*), in favour of L and M (*names and designations*), as his trustees and executors for the purposes therein mentioned; (*Third*) Notarial Instrument in favour of the said L and M, as trustees and executors duly confirmed of the said K, proceeding on the general conveyance contained in the said Trust-Disposition and Settlement recorded in the (*specify Register of Sasines and date of recording*); and (*Lastly*) Assignment by the said L and M in my favour, dated \_\_\_\_\_, and recorded (*specify Register of Sasines and date of recording*).—IN WITNESS WHEREOF, &c.

### 3. Partial Discharge of a Bond and Disposition in Security.

I, A (*designation*), IN CONSIDERATION of the sum of £500 sterling now paid to me by B (*designation*), DO hereby DISCHARGE, but only to the extent after specified, a Bond and Disposition in Security, dated \_\_\_\_\_, and recorded (*specify Register of Sasines and date of recording*), for the sum of £1000 sterling, granted by the said B in my favour, but that only to the extent of said principal sum of £500 now paid to me as aforesaid, and of the interest due thereon and penalties corresponding thereto: AND I DECLARE to be redeemed and disburdened thereof, and of the infetment following thereon, but only to the extent above specified, ALL AND WHOLE (*here describe or validly refer to the subjects*), all as specified and described in the said Bond and Disposition in Security, dated and recorded as aforesaid.—IN WITNESS WHEREOF, &c.

**4. Discharge of a Bond of Annual-Rent granted under the Authority of the Entail Acts.**

I, A (*designation of creditor*), IN CONSIDERATION of the sum of £                      sterling now paid to me by B (*designation of debtor*), DO hereby DISCHARGE a Bond of Annual-Rent and Disposition in Security, dated                      (*if recorded, say*) and recorded in (*specify Register of Sasines and date of recording*), granted by the said B in my favour under the authority of the Entail Acts, for payment of annual rent of £                      sterling during the full period of twenty-five years after the                      day of                      , and whole annual payments and others due therein, to be uplifted and taken furth of the lands and others therein and hereinafter described (*or referred to*), or any part or portion thereof, and readiest rents, profits, and duties of the same: AND I DECLARE to be redeemed and disburdened thereof, and of the infeftment following thereon, ALL AND WHOLE (*here describe or validly refer to the subjects, and specify or refer to real burdens, conditions, &c., if any, other than those of the entail as before directed, p. 236*), all as specified and described in the said Bond of Annual-Rent and Disposition in Security, dated and recorded as aforesaid.—IN WITNESS WHEREOF, &c.

**5. Discharge of the Personal Obligation contained in a Bond and Disposition in Security, so far as affecting the Granter and his Heirs, when the Lands in the Security have been Sold and the Purchaser has granted his Personal Bond of Corroboration to the Creditor.**

I, A (*designation*), CONSIDERING that by Bond and Disposition in Security, dated the                      day of                      (*if recorded, here say*) and recorded in (*specify Register of Sasines and date of recording*), B (*designation*), bound himself, &c. (*here narrate the Bond and Disposition in Security, as in the form of Personal Bond of Corroboration, given on p. 316, down to and including the words "in itself more fully bears," or as may be required*), and that the sums of money contained in the said Bond and Disposition in Security still remain due and unpaid: AND WHEREAS said lands and others have recently been sold by the said B to C (*designation*), and it

has been arranged that the said sums of money shall remain a debt due by the said C and his heirs and successors, and that the real security constituted by the said Bond and Disposition in Security shall subsist and remain in full force and effect during the non-payment of the said sums: AND WHEREAS the said C has granted or is about to grant to me his Personal Bond of Corroboration for payment of the foresaid sums of money, [or, and in the disposition of the said subjects in his favour it is agreed, as the said C by acceptance thereof AGREED and DECLARED, that the heritable security constituted by the said Bond and Disposition in Security, with the said sum of £                      sterling, interest thereof from the term of                      , and the whole other personal obligations therein contained shall transmit against the said C and be a burden on his title in terms of the 47th section of "The Conveyancing (Scotland) Act, 1874"], and it is proper that I should now grant these presents in favour of the said B: THEREFORE I hereby DISCHARGE the said B and his heirs, executors, and representatives whomsoever, of the whole personal obligations for payment of the sums contained in and due by the said Bond and Disposition in Security: BUT DECLARING ALWAYS that these presents shall nowise injure or affect the real security over the lands and others foresaid, constituted by the said Bond and Disposition in Security for payment of the foresaid sums of money, and that notwithstanding hereof said real security shall remain in full force and effect against the said lands and others until payment be made of the whole sums of money—principal, interest, and penalties, if incurred—contained in said bond, and until said security be formally renounced and discharge: AND I BIND myself and my heirs and successors to warrant this discharge at all hands and against all mortals: AND I consent to registration for preservation.—IN WITNESS WHEREOF, &c.

**6. Discharge and Renunciation of a Personal Bond for the Price of an Estate, and Real Burden therefor constituted over the Estate.**

I, A (*designation*), IN CONSIDERATION of the sum of £                      sterling, now paid to me by B (*designation*), DO hereby DISCHARGE a bond, dated the                      day of                      , for the sum of £                      , granted by the said B in my favour, and all interest due thereon, and also the real burden for the sums—

principal, interest, and penalties—contained in the said bond, and for the said bond itself, created over the lands and others after described, by disposition of said land and others granted by me in favour of the said B, dated the                      day of  
*(if recorded, say)* and recorded *(specify Register of Sasines and date of recording)*: AND I DECLARE to be redeemed and disburdened of the real burden for payment of the sums contained in said bond and constituted by the said disposition, ALL AND WHOLE *(here describe or validly refer to description of the lands, &c., over which the real burden extends)*, all as specified and described in said disposition, dated, and *(if recorded)* recorded as aforesaid.—IN WITNESS WHEREOF, &c.

**7. Discharge and Retrocession** *applicable to Bond and Assignment and Disposition in Security containing Assignment to a Policy of Insurance on the Borrower's Life, and Conveyance of his Interest in Entailed Lands in Security.*

I, A *(designation)*, IN CONSIDERATION of the sum of £ sterling now paid to me by B *(designation)*, DO hereby DISCHARGE a Bond and Assignment and Disposition in Security, dated *(if recorded, say)* and recorded in *(specify Register of Sasines and date of recording)*, granted by the said B in my favour for the sum of £                      sterling of principal, and all interest due thereon: AS ALSO for payment to the *(here specify the insurance company or society)*, at the head office of the said company *(or society)* in Edinburgh, &c. *(here will follow a detail of the further obligations and stipulations contained in the Bond and Assignment and Disposition in Security, as briefly as is consistent with accurate specification)*: AND I hereby ASSIGN, CONVEY, and MAKE OVER to the said B, and his heirs, executors, and assignees whomsoever, the certificate or policy of insurance before mentioned *(here will follow a specification of the certificate or policy contained in the Bond and Assignment and Disposition in Security)*, with all the right and interest which I have in or to the said certificate or policy of insurance, and all claim, benefit, or advantage which may arise thereby in any manner of way; together also with the assignment of the said certificate or policy in my favour contained in the said Bond and Assignment and Disposition in Security, and all that has followed or is com-

petent to follow thereon: SURROGATING hereby and substituting the said B and his foresaids in my full right and place of the said certificate or policy of insurance: AND FURTHER, I DECLARE to be redeemed and disburdened of the said Bond and Assignment and Disposition in Security, and of the infetment following thereon, ALL AND WHOLE (*here insert description of lands contained in the security*), all as specified and described in the said Bond and Assignment and Disposition in Security, dated and recorded as aforesaid.—IN WITNESS WHEREOF, &c.

### 8. Discharge of a Bond of Annuity and Disposition in Security.

I, B (*designation*), IN CONSIDERATION of the sum of £ sterling now paid to me by A (*designation*), DO hereby DISCHARGE a Bond of Annuity and Disposition in Security, dated (*and, if recorded, specify Register of Sasines and date of registration*), granted in my favour by the said A for payment to me or my assignees, during all the days of my life, of an annuity or yearly sum of £ sterling, free of all burdens and deductions whatsoever; and all sums due and payable under the said bond: AND I DECLARE to be redeemed and disburdened of the said Bond of Annuity and Disposition in Security, and of the infetment following thereon, ALL AND WHOLE (*here describe or validly refer to the lands held in security as in the bond*), all as specified and described in the said Bond of Annuity and Disposition in Security, dated and recorded as aforesaid.—IN WITNESS WHEREOF, &c.

### 9. Discharge of Bond and Disposition in Security where the Security Subjects are Sold under the Powers contained in the Bond.

I, A (*designation*), in whose favour the Bond and Disposition in Security after discharged was granted, CONSIDERING that, under the power of sale contained in said Bond and Disposition in Security, I exposed the subjects after described to sale by public roup upon the day of under Articles of Roup executed

by me upon the                      day of                      , and that the said subjects were purchased by B (*designation*): AND FURTHER, CONSIDERING that, in the said Articles of Roup, I bound myself to execute and deliver to the purchaser not only a valid disposition of the said subjects and others after described, but also in his option a discharge of, or an assignation to, the foresaid Bond and Disposition in Security, all as more fully therein set forth: AND NOW SEEING that I have been requested to grant the discharge after written, THEREFORE, in implement of said obligation, I DO hereby DISCHARGE a Bond and Disposition in Security, dated the                      day of                      , and recorded in the (*specify Register of Sasines and date of recording*), for the sum of £                      sterling, granted by C (*designation*) in my favour, and also all interest due thereon: AND I DECLARE to be redeemed and disburdened thereof, and of the infetment following thereon, ALL AND WHOLE (*describe the security subjects*), all as specified and described in the said Bond and Disposition in Security, dated and recorded as aforesaid: BUT IT IS hereby DECLARED, in terms of the said Articles of Roup, that the personal obligations contained in the said Bond and Disposition in Security for payment of the principal sum, interest and penalties, are not extinguished, transferred or discharged, but that the same remain as intact and competent to me as if these presents had not been granted.—IN WITNESS WHEREOF, &c.

We now pass to deeds of restriction.

**10. Deed of Restriction of an Heritable Security by the Original Creditor where no Price paid.**

(*Section 133 and Schedule (O O) Consolidation Act, 1868.*)

I, A (*designation of creditor*), CONSIDERING that B (*designation of debtor*), has requested me to release the lands and others hereinafter described (*or referred to*) from the security hereinafter specified, but without any consideration having been paid to me therefor, DO hereby DECLARE to be redeemed and disburdened of the security constituted by a Bond and Disposition in Security (*or other security*), dated (*insert date and, if recorded, say*) and recorded in the (*specify Register of*

*Sasines and date of recording*), for the sum of £                      sterling granted by the said B in favour of me, my heirs and assignees whomsoever (*or as the case may be*), ALL AND WHOLE (*here describe the lands to be disburdened*): AND I RESTRICT THE SECURITY thereby constituted to the lands and others contained in the said Bond and Disposition in Security other than those hereby disburdened.—IN WITNESS WHEREOF, &c.

The foregoing style is adapted to the case where the lands to be disburdened are an undescribed portion of the *cumulo* subjects contained in the bond, *e.g.*, a portion about to be sold, and which therefore it is contemplated by the schedule should be described at length, and properly so. At the same time it will be quite competent, if the purchaser of the portion sold has already received and recorded his disposition to refer to the lands to be disburdened, as described in the purchaser's disposition in the terms prescribed by Schedule O of the Conveyancing Act of 1874. Where the lands disburdened are articulately described in the bond, reference may in similar manner be made to the description as contained in the recorded bond or *sasine* thereon, or to any other recorded deed containing the description at length.

#### 11. Discharge and Deed of Restriction of Bond and Disposition in Security *where Part only of the Sum is paid up.*

I, A (*designation*), IN CONSIDERATION of the sum of £                      now paid to me by B (*designation*), DO HEREBY DISCHARGE (but only to the extent after mentioned) a Bond and Disposition in Security, dated the                      day of                      , and recorded in the (*specify Register of Sasines and date of recording*), for the sum of £                      granted by the said B in favour of me and my heirs or assignees (*or as the case may be*), but that only to the extent of the said sum of £                      now paid to me as aforesaid, interest due thereon, and penalties corresponding thereto in case of failure, if incurred: AND I DECLARE to be redeemed and disburdened of said Bond and Disposition in Security, and of the infetment following thereon, but only to the extent foresaid, ALL AND WHOLE (*here describe lands to be disburdened of sum repaid only*), all as specified and described in the said Bond and Disposition in Security, dated and recorded as aforesaid: AND FURTHER, in consideration of the payment made to me as aforesaid, I do hereby LIMIT and RESTRICT the security for the sum of £                      of principal still remaining due to me under said Bond and Disposition

in Security, with the interest thereof, and penalties corresponding thereto, to the lands and other heritages before described, and I do hereby DECLARE to be redeemed and disburdened of the said Bond and Disposition in Security, and of the infeftment following thereon, absolutely, and to the full extent of the whole sums—principal, interest, and penalties—contained in the said Bond and Disposition in Security, ALL AND WHOLE the following lands and others, being the whole lands and others contained in the said Bond and Disposition in Security, except the lands and others hereinbefore described, viz., ALL AND WHOLE (*here insert description of lands in Bond and Disposition in Security which are to be wholly disburdened*), all as specified and described in the said Bond and Disposition in Security, dated and recorded as aforesaid: RESERVING ALWAYS the said Bond and Disposition in Security, and infeftment following thereon, and the security thereby created over the lands and others therein contained, other than the lands and others last before described, but that only to the extent of the foresaid sum of £                      of principal still remaining due to me as aforesaid, with the interest thereof, and penalties corresponding thereto in case of failure, if incurred: AND DECLARING that the said Bond and Disposition in Security, and infeftment thereon, and security thereby created, shall remain in full force and effect except as regards the said lands and others last hereinbefore described, but that only to the extent of the foresaid sum of £                      of principal still remaining due to me as aforesaid, with the interest thereof, and penalties corresponding thereto as aforesaid, if incurred: AND I OBLIGE myself and my heirs and successors to warrant the before-written discharge at all hands, and the before-written restriction from my own facts and deeds only: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

**12. Discharge and Deed of Restriction of Bond and Disposition in Security where Part only of the Sum is paid up. (*Another Form.*)**

I, A, &c. (*as in preceding form*): AND I DECLARE to be redeemed and disburdened of said Bond and Disposition in Security, and of the infeftment following thereon, but only to the extent foresaid, ALL AND WHOLE (*describe whole lands or subjects as in the security*), all as specified

and described in the said Bond and Disposition in Security, dated and recorded as aforesaid: AND FURTHER, in consideration of the payment made to me as aforesaid, I do hereby DECLARE to be REDEEMED and DISBURDENED of the said Bond and Disposition in Security, and of the infetment following thereon, to the full extent of the whole sums therein contained—principal, interest, and penalties—ALL AND WHOLE (*describe portions of lands or subjects to be wholly disburdened*), which subjects are part and portion of the whole foresaid subjects contained in said Bond and Disposition in Security, all as specified and described in the said Bond and Disposition in Security, dated and recorded as aforesaid: AND I RESTRICT the said Bond and Disposition in Security, and the infetment following thereon, and the security thereby constituted for the sum of £                      of principal still remaining due to me, with interest thereon, and penalties corresponding thereto, to the lands, subjects, and others contained in the said Bond and Disposition in Security, other than those hereinbefore wholly disburdened thereof: DECLARING that the said Bond and Disposition in Security, and infetment thereon, and security thereby created, shall remain in full force and effect, except as regards the lands, subjects, and others last hereinbefore described, and wholly hereby disburdened, but that only to the extent of the foresaid sum of £                      of principal still remaining due to me as aforesaid, with the interest thereof, and penalties corresponding thereto, if incurred: AND I OBLIGE myself and my heirs and successors to warrant the before-written discharge at all hands, and the before-written restriction from my own facts and deeds only: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

Discharges and Deeds of Restriction of Heritable Securities are completed by registration in the appropriate Register of Sasines, with warrant of registration on behalf of the proprietor or party receiving the discharge.

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#### SECTION XIV

#### MISCELLANEOUS WRITS CONNECTED WITH THIS TITLE

Where an heir of entail obtains power from the Court to uplift consigned money in repayment of sums expended by him in improvements, he executes at the sight of the Court a deed acknowledging that he has

received the money, and discharging the entailed estate and the heirs of entail of his claim in respect of the expenditure on improvements allowed by the Court. The following is the form of such a deed :—

**1. Deed of Acknowledgment and Discharge of Expenditure on Permanent Improvements on Entailed Estates.**

I, A (*designation*), heir of entail in possession of the entailed estate of X, lying in the County of Y: WHEREAS, in terms of the "Entail" Acts, I, on the                    day of                    19                   , presented a petition to the Lords of Council and Session (                    Division, Lord                   , Junior Lord Ordinary, Mr.                   , Clerk), *inter alia*, setting forth that I was heir of entail in possession of the said entailed estate of X, under and in virtue of the Deed of Entail specified in said petition, and that I was feudally vest in the said lands and others, conform to the writs in said petition specified; that the                    company, under the provisions of the                    Act, took and acquired from me, for the purposes of the said Act, and for the execution of the undertakings authorised thereby, certain portions of land in the parish of                   , forming part of the said entailed estate of X, &c. (*the narrative should be adapted from the petition to uplift, and should set forth in particular the ascertainment of the compensation and its deposit in bank, subject to the direction of the Court*): AND that the said petition further sets forth that I had during the years                    and                    and intervening years expended a sum of at least £                    in making permanent improvements on the said estate, conform to a detailed statement produced with said petition, these improvements consisting chiefly (*specify them shortly*), that I was desirous of obtaining their Lordships' authority to apply the said sum of £                    consigned in bank as aforesaid in repayment *pro tanto* of the said sum so expended by me, and praying their Lordships, *inter alia*, to remit to one or more qualified persons (*here narrate the prayer of the petition, concluding the narrative with the words*), as the said petition in itself more fully bears: AND WHEREAS the said petition having been intimated, advertised, and served in terms of the statutes thereanent, and of an order of the said Junior Lord Ordinary (*or of Lord                   , Lord Ordinary on the Bills*), dated the                   , his Lordship on the                    day of                    remitted to Mr. C, W.S., to examine, &c. (*here give the terms of the interlocutor of remit to the professional*

*and skilled reporters*): AND WHEREAS the said C and E (*the skilled reporters*) having reported to the said Junior Lord Ordinary in terms of the remits made to them respectively as aforesaid, and his Lordship having made avizandum with the reports, pronounced an interlocutor in the following terms (*quote at length*): AND WHEREAS these presents have been revised and adjusted by the said C: AND NOW SEEING that the said

Bank of Scotland has made payment to me of the foresaid sum of £ (here give the sum found by the last interlocutor to be chargeable against the estate), with all interest due thereon: THEREFORE I do hereby not only acknowledge the receipt of the foresaid sum of £ , and all interest due thereon, but also do hereby, in respect of the payment of the said sum of £ , DISCHARGE the foresaid entailed estate of X, and the whole heirs of entail entitled to succeed to me therein of the expenditure on improvements set forth in the foresaid petition, and allowed by the interlocutor last above quoted, and also of all claims whatsoever competent to me, or my heirs, executors, and successors whomsoever against the said entailed estate, or heirs of entail foresaid, in respect of the improvements mentioned in said petition, and expenditure thereon allowed as aforesaid, but that only to the extent of the foresaid sum of £ , and no further: RESERVING to me all rights competent to me with respect to the said expenditure in so far as the same is not hereby discharged: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

This deed is adjusted by the professional reporter nominated by the Court, and is recorded in the Books of Council and Session.

## 2. Deed of Consent by Heritable Creditors authorising the Granting of Feu-Rights of Portions of the Lands contained in their Securities.

It occasionally happens that lands affected by heritable securities can be advantageously feued or sold under burden of ground-annuals, so as both to benefit the proprietor and improve the creditor's security; and to save the necessity of obtaining the consent of the creditor to each feu or ground-annual right, or of his granting a deed of restriction applicable to each, it may be arranged that he shall grant a Deed of Consent, authorising the proprietor to grant feu or ground-annual rights, the

yearly feu-duty or ground-annual not being below a specified minimum rate.

We give below a form of Deed of Consent applicable to feu-rights:—

I, A (*designation*), CONSIDERING that by Bond and Disposition in Security for the sum of £ , granted by B (*designation*) in my favour, dated and recorded in the Division of the General Register of Sasines applicable to the County of Edinburgh, both on the day of , the said B, in security of the sums—principal, interest, and penalties—therein contained, disposed to me and my heirs and successors, heritably but redeemably, as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, *inter alia*, ALL AND WHOLE (*describe ground as in bond, at length or by reference*): AND WHEREAS the said B, being desirous to feu out in lots the said area or piece of ground, has requested me to grant the Deed of Consent and restriction under written, which I have agreed to do, but without any consideration being paid to me therefor: THEREFORE I do hereby CONSENT and AGREE that it shall be competent to and in the power of the said B and his heirs and successors, without the consent of me or my foresaids, to dispoise in feu-farm from time to time, and in such lots or portions as he or they may think expedient, the said area or piece of ground above described, with the houses or other buildings erected or to be erected thereon, to be holden of and under themselves for payment of such annual feu-duties as they may think proper: BUT ALWAYS with and under this express condition, that the annual feu-duties to be paid for the feus to be granted by the said B or his foresaids shall not be less than the rates following (*here state the rate or rates of feu-duty*): AND with and under this further condition, that no price or grassum shall in any case be taken by the said B or his foresaids, as a surrogatum for or as a redemption of, the feu-duty of the ground so feued or any part thereof, without prejudice to his receiving the price of any house or other building now erected, or that may be hereafter erected, by him upon the ground so to be feued: AND AS REGARDS the feus to be granted in accordance with the above written conditions, I do hereby, but subject to the provision and declaration after contained, restrict the security constituted by the said Bond and Disposition in Security to the *dominium directum* or superiority of the said feus, and to the feu-duties, duplicands thereof, and other prestations payable furth or in respect of the same, and declare that the *dominium utile* thereof shall, from and

after the dates respectively of recording the feu-rights in the Register of Sasines, be freed and disburdened of the said security, reserving the same entire in other respects: DECLARING ALWAYS, as it is hereby specially provided and declared, that this restriction shall not take effect, and the *dominium utile* of any feu or feus to be granted as above provided, shall not be freed and disburdened of the said Bond and Disposition in Security, unless and until buildings shall have been erected on the same capable of yielding a rental equal to double the amount of the feu-duty payable therefor respectively: AND I RESTRICT the security constituted by the said Bond and Disposition in Security to the *dominium directum* or superiority of the said respective lots of ground, and of the buildings thereon, and whole pertinents thereof, and to the feu-duties, duplicands, and other prestations exigible therefrom respectively, in terms of the feu-rights of the same: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

The foregoing deed can easily be adapted to the case of granting dispositions subject to ground-annuals in the case of lands where sub-feuing is prohibited, or from any cause is not to take place.

In any subsequent assignation of the security it would be right that the Deed of Consent (or of consent and commission) should be noticed, and the security conveyed, with a clause of warrandice from which the deed and all that has followed thereon are excepted.

### 3. Discharge and Renunciation of a Right of Liferent in Lands *constituted by Contract of Marriage.*

I, A (*designation*), IN CONSIDERATION of the sum of £ sterling instantly paid to me by B (*designation*), whereof I hereby acknowledge the receipt (*or for certain good causes and considerations, but without any price being paid to me therefor*), do hereby DISCHARGE, RESIGN, and RENOUNCE to and in favour of the said B, his heirs and assignees whomsoever, my liferent right of and in ALL AND WHOLE (*here describe or validly refer to the lands*), together with all right, title, or interest which I have or can pretend to the said lands and others in any manner of way, in which lands and others I stand infeft in liferent during all the days of my lifetime in virtue of the Contract of Marriage entered into between me and C (*designation*), dated , and recorded in (*specify Register of Sasines and date of*

*registration; or, if infestment taken otherwise, specify particulars as above shown*): DECLARING my said liferent right to be extinguished, and the said lands and others freed and disburdened thereof from and after the term of \_\_\_\_\_, and in all time coming: WITH POWER to the said B and his foresaids to intromit with, uplift, and receive the yearly rents, profits, and duties falling due for the possession of the said lands and others from and after the said term of \_\_\_\_\_, and in general to exercise all rights of ownership over the said lands and others as freely and absolutely as if the said liferent right had never existed, or were actually determined and extinguished by my death: AND I grant warrandice from my own facts and deeds: AND I consent to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

By "The Titles to Land Consolidation (Scotland) Act, 1868," the law of succession to heritable securities (but not ground-annuals) is altered, and these now form part of the moveable succession of the creditor therein. It is provided (sec. 117) that from and after the commencement of the Act (31st December 1868) heritable securities shall, except where executors are excluded, be moveable, as regards the succession of the creditor, and after his death shall belong to his executors or representatives *in mobilibus*.

Exclusion of executors may be effected (1) by a declaration of exclusion contained in the Bond and Disposition in Security itself, or (2) by separate Minute of Exclusion. In the latter case, where the Bond and Disposition has not been recorded or followed by an Instrument of Sasine or Notarial Instrument, recorded in the Register of Sasines, or where, in the case of a conveyance or deed relating to such security not recorded in the Register of Sasines, the creditor shall desire to exclude executors, it shall be competent for him to do so by endorsing on the unrecorded security or other deed of conveyance, a Minute of Exclusion in or as nearly as may be in the form appended to the Act, and given below, and recording the writ along with such minute in the appropriate Register of Sasines.

Where the security has already been recorded, or followed by a recorded instrument, a Minute of Exclusion may be executed and recorded by itself in the appropriate Register of Sasines with the same effect. In this case the minute will require to have a warrant of registration endorsed before being recorded.

Where it is desired to remove an exclusion of executors, this may be accomplished (1), where the security or other writ has not yet been recorded, by endorsing thereon Minute of Removal of Exclusion in the form of Schedule (E E) annexed to the Act, and duly recording the writ and Minute of Removal; or (2) where the writ has been recorded, by executing and recording a separate Minute of Removal of such exclusion in the manner above specified; or (3) by the creditor assigning, conveying, or bequeathing such security or writ to himself or any other person without expressing or repeating the exclusion, and upon such assignation, conveyance, or bequest taking effect, the security shall become moveable as regards the succession of such creditor or other person, as the case may be.

The Act declares that heritable securities shall remain heritable as regards the rights of spouses, children's legitim, and the fisc.

It will be remembered that heritable securities by way of ground-annual continue heritable *quoad* succession.

Examples of the minutes referred to are given below :—

**4. Minute excluding Executors from an unrecorded Heritable Security or Assignment, to be endorsed on the Deed.**

I, A (*designation*), hereby EXCLUDE executors from the within Bond and Disposition in Security (*or assignment, or as the case may be*).—IN WITNESS WHEREOF, &c.

This will be endorsed on the writ constituting or transmitting the security, and to complete the exclusion, the writ and minute will be recorded with warrant of registration in the appropriate Register of Sasines.

Where the security has been transmitted, and executors have not been excluded from the bond itself, the minute will be made to apply to it as well.

Where the security has already been constituted by infestment, in favour of the original creditor or his assignee, the minute will form a separate writ.

**5. Minute of Exclusion of Executors from a recorded Heritable Security or Assignment, as a Separate Writ.**

I, A (*designation*), hereby EXCLUDE executors from the Bond and Disposition in Security (*or other security*), dated the                      day of                      , and granted by B (*designation*) in favour of me and my executors or assignees whomsoever, for the sum of £                      sterling, over ALL AND WHOLE (*describe or validly refer to the subjects as in the security writ*), which Bond and Disposition in Security (*or as the case may be*) is recorded in the [*or if the bond has been followed by sasine or Notarial Instrument, say—and Instrument of Sasine (or Notarial Instrument) following thereon, recorded in the*] (*specify Register of Sasines and date of recording*).—IN WITNESS WHEREOF, &c.

If the party executing the minute is not the original creditor in the bond, but has acquired right by assignment or other deed, the exclusion will, in like manner, be extended to this mid-couple, and before the testing clause in the above example will be added :—

. . . . .

AND also from the assignation (*or as the case may be*) of the said Bond and Disposition in Security, granted by (*specify the original creditor or cedent*), in favour of me and my executors and assignees whomsoever, dated the                      day of                      , and recorded in the (*specify Register of Sasines and date of registration*).—IN WITNESS WHEREOF, &c.

The minute will require a warrant of registration in common form to be endorsed and will then be recorded in the appropriate Register of Sasines.

If executors be already excluded from the original deed, and exclusion be now desired merely from a mid-couple, such as an assignation already recorded, this may be effected by—

#### 6. Minute of Exclusion of Executors from an Assignation in Ordinary Form of an Heritable Security excluding executors.

I, A (*designation*), hereby EXCLUDE executors from the assignation, dated (*specify date*), and recorded in the (*specify Register of Sasines and date of recording*), granted by B (*designation*) in favour of me, my executors, and assignees whomsoever, of a Bond and Disposition in Security, dated (*specify date*), granted by C (*designation*) in favour of the said B and his heirs, excluding executors or assignees whomsoever, for the sum of £                      sterling, over ALL AND WHOLE (*describe or validly refer to the subjects as in the bond*), and recorded in (*specify Register of Sasines and date of registration*).—IN WITNESS WHEREOF, &c.

This minute will require, like the last, to be recorded with warrant of registration in the appropriate Register of Sasines.

Where the exclusion of executors has already been effected, either by a clause to that effect in the security deed or assignation or other transmission thereof, or by a Minute of Exclusion endorsed thereon, and the creditor wishes to remove such exclusion, he will execute a minute to the following effect :—

#### 7. Minute of Removal of Exclusion of Executors.

I, A (*designation*), hereby REMOVE the Exclusion of Executors contained in (*or endorsed on*) the Bond and Disposition in Security (*or assignation, or otherwise, as the case may be*), granted by B (*designa-*

tion), in favour of me and my heirs, excluding executors or assignees whomsoever, dated the            day of            , and recorded in the (or, if not recorded but followed by Notarial Instrument, say—and Notarial Instrument following thereon, recorded in the (*specify Register of Sasines and date of recording*)).—IN WITNESS WHEREOF, &c.

If the exclusion of executors has been accomplished by a separate Minute of Exclusion, then the above minute from and after the word "executors" in the first line will run as follows:—

CONTAINED in the Minute of Exclusion of Executors, executed by me, dated the            day of            , and recorded in the (*specify Register of Sasines and date of recording*)).—IN WITNESS WHEREOF, &c.

Section 117 of the Consolidation Act should be referred to, as to the recording and employment of these minutes.

A doubt having been expressed as to whether the provisions regarding succession contained in the Consolidation Act of 1868 applied to real burdens as well as to heritable securities, it was enacted by section 30 of the Conveyancing Act of 1874 that all the provisions of the 1868 Act should apply to real burdens as well as to heritable securities. The conveyance will therefore follow the provisions of section 117 of the Consolidation Act of 1868 when it is desired to exclude executors from succession to real burdens, or to remove such exclusion.

*Provision for Calling up Loans, and for Sale or Foreclosure of  
Security Subjects.*

The "Titles to Land Consolidation (Scotland) Act, 1868" (s. 119), introduced a short method of enabling a creditor in a Bond and Disposition in Security to call up his money, and sell the security subjects in the event of the demand not being complied with by the debtor. It is there provided that where the granter of the bond shall fail to make payment of the sums due under the bond within three months after a demand therefor has been made in the form specified in the Act, the creditor may, without further intimation or process, but after publication as there provided, sell the security subjects by public roup, and satisfy his debt, with interest and expenses. The form in which the demand is to be made is as follows:—

**8. Schedule of Intimation, Requisition, and Protest.**—*Section 119, Schedule (F F), No. 2 Consolidation Act of 1868.*(a)

I, A (*designation*), procurator for B (*design creditor in right of security*), in whose favour the Bond and Disposition in Security after

(a) See *Howard & Wyndham v. Richmond's Trs.*, 1890, 17 R. 990; 27 S. L. R. 800.

mentioned was granted (*or if he is not the original creditor, now in right of the Bond and Disposition in Security after mentioned*), do hereby GIVE NOTICE to you, C (*design debtor under the security*), that payment is now required of the sum of £ , being the principal sum due under the Bond and Disposition in Security, dated , and recorded , granted by you, C (*or by D, designation*), in favour of the said B (*or original creditor*) (*if B is not the original creditor, add—to which B has now right by various transmissions; but these transmissions need not be particularly specified*), and of the sum of £ , being the interest due at present on the said principal sum, with such further sum of interest as shall accrue on the said principal sum till paid: AND I further give you notice, that if at the expiry of the period of three months from the date hereof the sums, principal and interest and liquidate penalty incurred and to be incurred, of which payment is now required, shall not be paid in terms of the said Bond and Disposition in Security, then the said B, or the person or persons who may then be in right of the said Bond and Disposition in Security, may proceed to sell the lands and others (*or subjects*) thereby conveyed, in the manner provided by the “Titles “to Land Consolidation (Scotland) Act, 1868,” and with all powers and privileges conferred on or competent to creditors under Bonds and Dispositions in Security by that Act: THIS I do at on the day of , before and in the presence of L M, notary public, and N O and P Q (*design them*), witnesses to the premises, called and required, and hereto with me subscribing.

(Signed) A.

L M,

Notary Public.(a)

N O, *witness.*

P Q, *witness.*

This schedule, duly executed and attested, must be intimated to the debtor, in presence of the notary and witnesses, personally or at his dwelling-place, or if furth of Scotland, edictally, and evidence must be preserved of the demand by the notary's granting a certificate in the following terms upon a copy of the schedule:—

---

(a) Although not required by Schedule (F F), No. 2, it seems proper that the notary as well as the witnesses should sign the schedule.

**9. Certificate by Notary on Copy of foregoing Schedule.—Schedule (F F), No. 3, of Consolidation Act.**

I CERTIFY that what is above written is a true copy.

(Signed) L M,  
Notary Public.

No provision was made by the Act of 1868 for the case of there being more debtors than one, but section 119 thereof, introducing the foregoing procedure, was amended by section 7 of the "Titles to Land Consolidation (Scotland) Amendment Act, 1869," and provision was made for intimating the demand for payment contained in the schedule above shown to more persons than one. A certificate to the following effect will in that case be appended to a copy of the schedule :—

**10. Certificate by Notary on Copy of foregoing Schedule where the Demand for Payment has been intimated to more Persons than One.—Consolidation Act, 1869, s. 7.**

I CERTIFY that what is above written is a true copy; and I also certify, in terms of the "Titles to Land Consolidation (Scotland) Amendment Act, 1869," that a similar demand for payment has been intimated to [name and design the other persons, and specify the dates and places of intimation to them, e.g.—E of (address), at his dwelling-place there on the                      day of                      , and to each of F (designation), G (designation), and H (designation), at the office of the Keeper of the Record of Edictal Citations within the General Register House, Edinburgh, also on the said                      day of                      (or as the case may be).]

(Signed) L M,  
Notary Public.

The Act of 1868 provides that after satisfying his debts, the creditor shall consign the surplus in bank in the joint names of himself and the purchaser, for behoof of the parties having best right thereto, and that upon such consignment the disposition to be granted by the creditor to the purchaser shall completely disencumber the subjects sold of the security as well as of all posterior securities and diligences. No provision was, however, made for the case of there being no surplus, and this omission is supplied by the Conveyancing Act of 1874, which provides (s. 48) that, where this is the case, any notary may grant a certificate in terms

there given, and that the disposition, when recorded along with such certificate in the appropriate Register of Sasines, shall have the same effect of disencumbering the subjects.

**11. Certificate by Notary where Lands are sold under Heritable Security, and no Surplus emerges.—Section 48, Schedule L, No. 1, Conveyancing Act of 1874.**

I, A (*designation*), notary public, with reference to the sale of ALL AND WHOLE the lands of (*describe or refer to the lands*), which sale took place at \_\_\_\_\_, upon the \_\_\_\_\_ day of \_\_\_\_\_, at the instance of B (*designation*), in virtue of the power of sale contained in a Bond and Disposition in Security for the sum of £ \_\_\_\_\_, with interest and penalties corresponding thereto, dated \_\_\_\_\_, and recorded in the Register of Sasines for \_\_\_\_\_ the day of \_\_\_\_\_, granted by C (*designation*) in favour of the said B (*or in favour of D (designation)*), but to which the said B has acquired right by progress *or otherwise, as the case may be*), do hereby CERTIFY that there has been submitted to me a statement of the intronmissions of the said B, with the price of the said lands, subscribed as authentic by the said B (*or by M, agent of the said B, on his behalf*), from which it appears that no surplus remains for consignation in bank, in terms of the 122nd and 123rd sections of "The Titles to Land Consolidation (Scotland) Act, 1868": AND I make this certificate in terms of "The Conveyancing (Scotland) Act 1874."—IN WITNESS WHEREOF, &c. (*testing clause*).

The Conveyancing Act of 1874 (s. 49), provides that when the debtor in a Bond and Disposition in Security is desirous of exercising his power of redemption, but from the death or absence of his creditor, or some other cause, is unable to obtain a discharge, it shall be competent for him to consign the amount due and expedite a certificate in the following form :—

**12. Certificate of Notary where Lands have been Redeemed of Heritable Security, but Discharge cannot be obtained.—Section 49, Schedule L, No. 2, Conveyancing Act of 1874.**

I, A (*designation*), notary public, do hereby certify that B (*designation of debtor*), proprietor of the lands of X (*name the lands as*

*shortly as possible*) and others, in the County of Y, being the lands contained in the Bond and Disposition in Security (*or other deed of security*), for (*state sum*) after mentioned, has appeared before me and represented that he did, on the                      day of                      , consign in the                      bank at                      , the sum of £                      , with £                      , being the whole interest due under the said Bond and Disposition in Security (*or other deed of security*), in name of C (*designation*), the creditor in the said Bond and Disposition in Security [*or other deed of security ; if only a partial creditor, say—to the extent of £ (state sum)*]: WHICH CONSIGNATION was made in virtue of the power of redemption reserved in the said Bond and Disposition in Security (*or other deed of security*), which was granted by the said B (*or by D (designation)*), then proprietor of the said lands) in favour of the said C (*or E (designation)*), the original creditor in the said security), and is dated (*insert date*), and recorded in the Register of Sasines for                      the                      day of                      (*if sasine was expedite on the Bond and Disposition in Security or other deed of security instead of, and recorded, &c., say—on which Bond and Disposition in Security (or other deed of security) the said C (or E, as the case may be) was infeft, conform to Instrument of Sasine in his favour, recorded in the Register of Sasines for                      , the                      day of                      )*: AND the said consignation was rendered necessary by the refusal of the said C to receive the sum of £                      , and interest thereon (*or by the absence of the said C, or otherwise, as the case may be, stating the reason why discharge could not be obtained*), notwithstanding that the requisite notice of redemption was given to him: AND I make this certificate in terms of “The Conveyancing (Scotland) Act, 1874.”—IN WITNESS WHEREOF, &c. (*testing clause*).

By recording this certificate with a warrant of registration in the appropriate Register of Sasines the lands are disencumbered of the security.

The Heritable Securities Act, 1894 (57 & 58 Vict. c. 44), facilitated greatly the enforcement of the creditor's rights under heritable securities. The case of there being no surplus is further provided for by section 8 of that Act, which gives the creditor who has exposed the security subjects at a price not exceeding the amount due under his own and under any prior and *pari passu* securities (not including expenses), and who has failed to find a purchaser, the option of himself becoming proprietor of the subjects by applying to the Sheriff for decree in terms of Schedule D annexed to the Act, and recording an extract of such decree, when got, in the appropriate Sasines Register. This registration of the extract extinguishes the debtor's right of redemption, and disencumbers the subjects of all securities

**18. Petition by a Heritable Creditor to acquire the Security Subjects in Absolute Property (under the Heritable Securities (Scotland) Act, 1894, s. 8).**

To grant a decree against the said B, finding and declaring that he has forfeited the right of redemption reserved to him in the Bond and Disposition in Security for £ sterling, granted by him in favour of the pursuer, dated , and recorded in the Division of the General Register of Sasines applicable to the County of , on , and that the said right of redemption is extinguished as from and after the date of the decree to follow hereon, and that the pursuer has right to, and is vested in, as absolute proprietor thereof, the following subjects, being the subjects described in and conveyed in security by the said Bond and Disposition in Security, viz., ALL AND WHOLE (*insert description as in bond, and refer to burdens, &c., as therein specified or referred to*), and

that at the price of £                      sterling (*insert upset price at which subjects were last exposed*): AND to direct that the expenses incurred and to be incurred by the pursuer in connection with this application and the proceedings to follow hereon be treated as expenses of sale, and to decern: AND to grant warrant to record an extract of the decree to follow hereon in the said Division of the General Register of Sasines: AND to find such of the defenders as appear and oppose this position liable in expenses.

*Condescendence.*

1. The pursuer is the holder of a Bond and Disposition in Security for £                      sterling, granted by the defender B in his favour, dated                      , and recorded in the Division of the General Register of Sasines, applicable to the County of                      , on                      . Interest on the said bond is due from (*insert date*). The said Bond and Disposition in Security is produced herewith.

2. The security subjects contained in said bond consist of (*short description*). There is produced herewith an advertisement of the said subjects which gives details thereof.

3. So far as known to the pursuer, the only other creditors secured over the said subjects are the defenders the said, &c. (*describe other bondholders, and state their position in ranking with reference to the pursuer's security*).

4. The pursuer called up the said bond on                      , on which date the requisite statutory notice was served upon the defender, the said                      . A copy of the schedule of intimation, requisition and protest, with notarial certificate annexed, is produced herewith.

5. Payment not having been made, the said subjects were duly advertised for sale in                      newspaper, conform to certificate produced herewith.

6. In terms of the advertisement the said subjects were exposed for sale within                      , on                      19                      , at the upset price of £                      sterling. No offer was made for the said subjects, and the sale was accordingly adjourned. The Articles of Roup of said subjects, with Minute of Adjournment annexed, are produced herewith.

7. At the date of said exposure the amount due to the pursuer under said bond included—

Principal . . . . .	£
Interest, feu-duty, &c., as per statement produced	
	<hr/>
	£

Adding thereto the preferable debts due to the defenders—

The said . . . . .	
And the said . . . . .	
And the <i>pari passu</i> debts due to the defenders—	
The said . . . . .	
And the said . . . . .	
	<hr/>
Gives a total as at said date of,	£
	<hr/>

from which it appears that the upset price of £        did not exceed the amount due under the pursuer's security and said prior and *pari passu* securities, exclusive of the expenses attending the exposure (or this and prior exposures).

8. The pursuer is now desirous of acquiring the absolute property of the said subjects, and he makes the present application in terms of section 8 of the Heritable Securities (Scotland) Act, 1894.

*Plea in Law.*

The pursuer having exposed the subjects contained in the said Bond and Disposition in Security for sale at an upset price not exceeding the amount due under the same—and prior and *pari passu* securities, exclusive of the expenses of the exposure (or, of this and prior exposures), and having failed to find a purchaser, is, in terms of section 8 of the Heritable Securities (Scotland) Act, 1894, entitled to decree in terms of the prayer of the petition.—IN RESPECT WHEREOF.

The above form assumes the existence of other securities, but can be readily adapted to cases where the petitioner is the only bondholder. Where the debtor in the bond is dead, his representatives ought to be called as defenders in his place.

**14. Disposition by a Heritable Creditor to Himself (under the  
Heritable Securities (Scotland) Act, 1894, s. 8).**

I, A (*designation*), considering that in virtue of the power of sale contained in the Bond and Disposition in Security for the sum of £ granted by B (*designation*) in my favour, dated , and recorded , and after due intimation, requisition, and protest, and advertisement in terms of law, I exposed the subjects hereinafter disposed to public roup at , on the day of , at the upset price of £ , which upset price did not exceed the sum due under the said Bond and Disposition in Security (and prior and *pari passu* securities, *if any*) exclusive of the expenses of the exposure, all in terms of Articles of Roup executed by me, dated : THAT no person offered the said upset price, and the sale was accordingly adjourned: THAT I presented a petition to the Sheriff of at , on , in terms of section 8 of the Heritable Securities (Scotland) Act, 1894: THAT the said Sheriff, by interlocutor, dated , appointed the subjects to be re-exposed for sale at the upset price of £ at on : THAT the said subjects were re-exposed accordingly, at which exposure I was, in terms of the said section, entitled to bid for and purchase the said subjects: THAT at said re-exposure I offered the said upset price of £ , and being the only offerer, was preferred to the purchase, all as the said Articles of Roup and Minutes of Adjournment, Re-exposure and Preference thereon in themselves more fully bear: THEREFORE, in consideration of the said price of £ , I, in virtue and in exercise of the said power of sale, and in virtue of the said Act and interlocutor have sold, and do hereby dispoise to myself, and my heirs and assignees whomsoever, heritably and irredeemably ALL AND WHOLE (*describe or refer to the subjects as in bond with burdens as therein, &c., as in ordinary form of disposition*).

The disposition will be stamped with conveyance duty on the price, and the surplus price will be consigned, or a certificate of no surplus recorded.

Before the 1894 Act a *pari passu* bondholder could not, without consent of the creditor holding a *pari passu* security, sell the security subjects without providing for full payment of the other *pari passu* bond. He

could not compel the holder of the other *pari passu* bond to consent to a sale, and so might have his funds tied up in the security. It would appear that even after the Act a *pari passu* bondholder proceeding under section 8 can only (unless by arrangement with the other *pari passu* bondholder) acquire the security subjects under burden of the other *pari passu* bond. A measure of relief is, however, provided under section 11 of the 1894 Act for a *pari passu* bondholder who desires to sell the security subjects, and cannot obtain the consent of the other *pari passu* bondholder. That section authorises a sale to proceed at the instance of the bondholder who desires to sell, as if the creditors were carrying it through by arrangement, but the selling creditor cannot under that section become purchaser of or otherwise acquire the security subjects in absolute property. On a sale the price is paid to the creditors according to their preferences. The procedure under the section is by petition to the Sheriff for warrant to sell the subjects. The other *pari passu* bondholder is called as defender.

**15. Petition by *Pari Passu* Bondholder for Warrant to sell the Security Subjects (under the *Heritable Securities (Scotland) Act, 1894, s. 11*).**

In the Sheriff Court of the Sheriffdom of                      at                      .

The petition of A (*designation*), pursuer;

against

B (*designation*), defender.

The above-named pursuer submits to the Court the Condescendence and Note of Plea in Law hereto annexed, and prays the Court—

To grant warrant to sell ALL AND WHOLE (*description or reference*), and to order a sale of the said subjects, under the power of sale contained in the Bond and Disposition in Security for the sum of £                      , granted by C (*designation*), in favour of the pursuer, dated                      , and recorded                      ; to fix the upset price; to authorise the pursuer to carry through the sale; and upon payment or consignment of the price to authorise the pursuer to grant a conveyance, and to disencumber the said subjects of the said Bond and Disposition in Security, and of the *pari passu* security held by the defender constituted in his favour by Bond and Disposition in Security for £                      , granted by the said C in favour of the defender,

dated \_\_\_\_\_, and recorded \_\_\_\_\_, and that in the same way and as fully as if the pursuer and defender were by agreement carrying through such sale; to fix the time and conditions of sale; to order that the expenses of and connected with the sale shall be payable preferably out of the price, and that the balance of the price (after payment of prior securities) shall be paid to the pursuer and defender in proportion to the amounts due to them respectively under their said *pari passu* securities; and to discern; and to find the defender liable in expenses in the event of his appearing and opposing this application; or to do further or otherwise in the premises as to the Court may seem right.

*Condescendence.*

1. The pursuer holds a Bond and Disposition in Security for £ \_\_\_\_\_, granted by the said C in his favour, dated \_\_\_\_\_, and recorded \_\_\_\_\_. The defender also holds a Bond and Disposition in Security for £ \_\_\_\_\_, granted by the said C in his favour, dated \_\_\_\_\_, and recorded \_\_\_\_\_. The subjects conveyed in security by said Bonds and Dispositions in Security are (*describe or refer to subjects*). The said two Bonds and Dispositions in Security rank *pari passu* on the said subjects.

2. There is no other security on the said subjects so far as known to the pursuer (*or, so far as known to the pursuer, the only other securities over the said subjects are (mention other securities and order of ranking)*).

3. The pursuer desires to sell the said subjects, but he is unable to obtain the defender's consent to a sale; and accordingly he presents this petition under section 11 of the Heritable Securities (Scotland) Act, 1894.

*Plea-in-Law.*

The pursuer, being the holder of a security ranking *pari passu* with the security held by the defender, and being desirous of selling the security subjects, but unable to obtain the defender's consent to a sale is entitled in terms of section 11 of the Heritable Securities (Scotland) Act, 1894, to decree in terms of the prayer of the petition.—IN RESPECT WHEREOF, &c.

The 1894 Act further provides (s. 16) for an application in the Sheriff Court by a heritable creditor for warrant to intimate edictally the demand for payment specified in the 1868 Act to (1) the heir and other representative of a deceased debtor, where no title has been completed to the security subjects, and the name or address of the heir cannot be ascertained; (2) the debtor, where his address is unknown, or it is uncertain whether he is still alive (*a*); or (3) the person legally entitled to receive the intimation when his address cannot be ascertained.

**16. Petition to Intimate Edictally Demand for Payment of Sum in Heritable Security (under the Heritable Securities (Scotland) Act, 1894, s. 16).**

In the Sheriff Court of \_\_\_\_\_ at \_\_\_\_\_ .

The petition of

A (*designation*), petitioner.

The above-named petitioner submits to the Court the Condescendence and Note of Plea-in-Law hereto annexed, and prays the Court—

To grant warrant to and authorise the petitioner, as the creditor now in right of a Bond and Disposition in Security for the sum of £ \_\_\_\_\_ sterling, granted by B (*designation*) in favour of the petitioner, dated \_\_\_\_\_, and recorded \_\_\_\_\_, to intimate the demand of payment specified in section 119 of the Titles to Land Consolidation (Scotland) Act, 1868, and that by delivery at the office of the Keeper of the Record of Edictal Citations, within the General Register House, Edinburgh, of a Schedule of Intimation, Requisition, and Protest for and on behalf of the petitioner in the form herewith produced, and addressed to the heirs and representatives of B (*designation*), or in such other form, and addressed to such person or persons, by name or in his or their representative character, as the Court may prescribe, after such inquiry, if any, as the Court may think fit.

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(*a*) In the case of uncertainty as to whether the debtor is in life, it will be advisable to call his heir and representatives.

*Condescendence.*

1. The petitioner is the creditor now in right of a Bond and Disposition in Security for the sum of £                      sterling, granted by the said B in favour of the petitioner, dated                      , and recorded

. The subjects embraced in said Bond and Disposition in Security consist of (*short description of subjects*). The said Bond and Disposition in Security is produced herewith.

2. *Narrate circumstances which have rendered application necessary, e.g., that debtor has died intestate, that no title has been completed by his heir, and that he cannot ascertain the name and address of the heir.*

3. The pursuer is now desirous of intimating a demand for payment of the sums contained in said Bond and Disposition in Security, and he makes the present application in terms of section 16 of the Heritable Securities (Scotland) Act, 1894.

*Plea-in-Law.*

The debtor in said Bond and Disposition in Security being dead, and no title having been completed to the security lands by his heir or other representative, and the pursuer being unable to ascertain the name of such heir, warrant ought to be granted as craved.—IN RESPECT WHEREOF, &c.

The incapacity of the debtor does not prevent proceedings being taken under the 1894 Act. (See section 13.)

## TITLE VIII

### LEASES

A lease is a contract by which the proprietor for the time, or lessor, gives to the lessee the use or occupation of a certain subject, heritable in its nature, during a specified period, for payment of a certain rent, or other consideration, and on such conditions as may be agreed upon. Under it the lessee has a personal right by contract, and a real right by virtue of his possession following upon the lease,—the lessor being the creditor in the corresponding obligations by the lessee.

In ancient times leases were considered to be merely personal grants, and where a real right came to be acquired in the lands let, by a purchaser or creditor, the tenant was liable to be ejected. Where it was desired to make the right of the tenant real it was usual to insert a precept of sasine in the lease so that the tenant might be infeft thereon.

In order, therefore, to give tenants security of possession without the necessity of sasine, the Act of Parliament, 1449, c. 18, was passed, by which it is ordained, “for the sauftie and favour of the puir pepil that “labouris the grunde, that thai and al utheris that has taken or sal “tak landes in tym to cum fra Lords, and has termis and zeiris “thereof, that suppose the Lords sel or analy that land or lands, “the takars sall remain with thare tacks on to the ische of thare “termes, quhais hands that ever thai lands cum to, for siclik male as “thai tak thaim for.”

This statute applies to leases of houses, mills, fishings, collieries, and whatever is *fundo annexum*, as well as to agricultural subjects, but it does not apply to leases of game or of trout-fishing (*Earl of Galloway v. Duke of Bedford and Others*, 4 F. 851), which are rather grants of personal privilege than real rights. Leases of heritable subjects, therefore, are in effect real rights, and valid against adjudgers, heirs, and singular successors alike.

In order, however, to have the benefit of the Act of 1449, the following are essential requisites to leases:—

1. The lease, when for more than one year, must be in writing. Leases should not merely be in writing; they should also be probative. But if an improbate lease be the foundation of possession following upon it, and if it contain the elements of a proper lease, it will nevertheless constitute an effective lease, provided (a) the possession can only be ascribed to the informal lease, and (b) if there has been *rei interventus* (*Wilson*, 1876, 3 R. 527; *Duke of Hamilton*, 1877, 4 R. 322, affirmed, 1878, 5 R. (H. L.) 69; and *Buchanan*, 1878, 5 R. (H. L.) 69). A verbal lease is not valid for more than one year, and this defect will not be cured by possession following upon such a lease, or by *rei interventus*.

2. The lease must specify a definite term of endurance. The Act only applies to tenants holding rights of possession for a definite term of years, and having an ish thereto.
3. A rent must be expressed, which may, however, be either in money, grain, or services. It need not necessarily be equivalent to the value of the subjects let, but must not be illusory.
4. Possession must follow under the lease. It is by this mode that the tenant perfects his real right, and secures the privileges conferred by the Act. A lease completed by possession is preferable as a title of possession to a lease not so completed, although the latter may be prior in date. A written obligation to grant a lease, or missives of lease, are respectively equivalent to a formal lease if holograph of the parties, or tested, or if they have been followed by possession or by *rei interventus*, but an obligation to grant a lease "if required" will not be binding upon a singular successor (*Clark*, 1799, M. 15,225).

With reference to the tenant's power of assigning his interest in the lease, it may be stated generally that in agricultural leases of ordinary endurance there is an implied exclusion of assignees, unless the contrary is stipulated; while in urban tenements assignees are admitted, unless expressly excluded. The same doctrine may be stated as to sub-tenants. These, as well as assignees, are excluded in agricultural leases unless expressly included; but express permission to assign implies a power to sub-let. In urban tenements the rule is different, for, unless expressly excluded, sub-tenants are admitted, and this is also the case in agricultural leases of long endurance, in which the right of assigning and of sub-letting is implied, unless expressly excluded, so that in such case the exclusion of assignees will not bar sub-tenants.

Although agricultural leases of ordinary endurance are thus not assignable, they are adjudgeable; and hence, if the creditors of the tenant are meant to be excluded, a clause excluding assignees, both legal and voluntary, must be inserted in the lease. In order to prevent the tenant retaining possession in the event of his bankruptcy for behoof of his creditors, a declaration may be inserted in the lease that the bankruptcy of the tenant shall *ipso facto* infer a forfeiture. But see the case of *Bidoulac*, 1889, 17 R. 144, where it was held that a clause to this effect was an option or provision in favour of the landlord only. It is also usual to exclude heirs-portioners in the event of their succeeding, and to provide that the lease shall descend to the eldest daughter. The exclusion of assignees is sometimes expressly qualified, so as to enable the tenant to leave the lease on his death to any one of his sons, or to trustees for the benefit of his family; but the right to bequeath the lease is in any case now conferred upon the tenant by statute (see the Agricultural Holdings (Scotland) Act, 1883, s. 26).

The extinction of leases is effected by—

1st. Expiration of the stipulated term of endurance or the occurrence of a break. This, however, is not of itself sufficient to put an end to the tenant's right of possession, for unless the requisite intimation is made by him, or a legal warning given to him, the bargain is held to be continued for another year by virtue of what is termed tacit relocation. In the case of agricultural leases the notice of termination of tenancy to or by the tenant must be given in accordance with the provisions of section 28 of the Agricultural Holdings (Scotland) Act, 1883, as amended by section 8

of the Agricultural Holdings Act, 1900. The landlord's right to terminate the tenancy is, moreover, now materially qualified by the terms of section 4 of the Agricultural Holdings Act, 1906.

2nd. By the occurrence of any conventional irritancy contained in the lease, or by the tenant's abandonment or desertion of his possession, and, in the case of an agricultural lease, leaving the lands uncultivated at the proper season of the year.

3rd. By the occurrence of any of the statutory irritancies applicable to agricultural leases contained in the Act of Sederunt anent removings of 14th December 1756, or the Agricultural Holdings (Scotland) Act, 1883, s. 27.

4th. By the bankruptcy or insolvency of the tenant, if this be stipulated in the lease (but see case of *Bidoulac*, ante).

5th. By the destruction of the subjects *damno fatali*, provided the landlord is, in the case of houses or other buildings, not bound to restore. Destruction of the subjects, or damage practically amounting to destruction, entitles the tenant to abandon, and the lease will thereupon come to an end unless it contains any provision to the contrary. But see *Drummond*, 1869, 7 M. 347, and *Allan*, 1882, 10 R. 383, as to the tenant's right to abandon, and the amount of damage required in order to confer this right.

6th. A lease may also be brought to an end if the subjects leased be taken under the authority of an Act of Parliament for the purposes of the undertaking thereby authorised, or in virtue of the powers contained in any general municipal, police, or improvement Act, subject always to claims for compensation at the instance of both landlord and tenant against the promoters of the undertaking or local authority acquiring the subjects.

7th. By the tenant making and the landlord accepting a voluntary renunciation of the contract.

The following statutes which have been passed in recent times have an important bearing upon agricultural leases, viz. :—

1. The Agricultural Holdings (Scotland) Act, 1883 (46 & 47 Vict. c. 62), as amended by the Market Gardeners' Compensation (Scotland) Act, 1897 (60 & 61 Vict. c. 22);
2. The Agricultural Holdings Acts, 1900 (63 & 64 Vict. c. 50), with the relative "The Agricultural Holdings (Scotland) Rules, 1900," as settled by the Board of Agriculture; and
3. The Agricultural Holdings Act of 1906.

The following points, most of which have formed the subject of decision, may be of use to the conveyancer :—

(a) It is a sufficient compliance with the requirement that a lease must be for a definite term of endurance if the lease be granted for one or more liferents (*Oswald*, 1688, M. 15,194; *Wight*, 1763, M. 10,461 and 15,199).

(b) A lease completed by possession is preferable to a lease upon which possession has not followed, even although the latter may be prior in date (*M'Millan*, 1627, M. 7018 and 15,229; *Kerr*, 1620, M. 15,227).

(c) A lease in order to be effectual should not only be probative but duly stamped. An unstamped lease cannot be produced in evidence nor founded on as a ground of action, but the want of the stamp duty may be supplied at any time during the currency of the lease on payment of the statutory penalties.

(d) A *curator bonis* is entitled, in virtue of section 19 of the Judicial

**Factors (Scotland) Act, 1889 (52 & 53 Vict. c. 39)**, without the authority of the Court, to grant a lease of agricultural subjects for a period not exceeding twenty-one years (*Molleson, Petitioner*, 1890, 17 R. 303).

(e) By section 9 of the Entail Act, 1882, an heir of entail is permitted to renew leases of not less than seven years' currency within two years previous to the expiration of such leases, at a fair rent.

(f) A heritable creditor in possession under a Decree of Mails and Duties is entitled to grant leases of the subjects of which he is still in possession, but the endurance of such leases is limited by the period of his possession under the decree. Similarly, a lease by a liferenter is only effectual during the subsistence of the liferent. On the other hand, a proprietor whose right is burdened with a liferent is not entitled to grant leases of the liferented subjects without the consent of the liferenter.

(g) Even although there be no destination to heirs contained in a lease, the right, being heritable in its nature, will pass to the tenant's heir-at-law at his death, if the tenant should die before the expiration of the lease, and should not have availed himself of the power conferred upon him by the Agricultural Holdings Act of 1883, to bequeath his right under the lease.

(h) Where the lease is given to two or more persons as joint-tenants the interest of one of the tenants who predeceases will pass to his heir-at-law on his death, and not to the surviving tenant. But see the cases of *Macalister*, 1859, 21 D. 560; *Police Commissioners of Dundee*, 1884, 11 R. 586; *Burns*, 1885, 12 R. 1343; and *Burns*, 1887, 14 R. (H. L.) 20, with reference to leases granted to two joint-tenants and the survivor and their heirs, and to two joint-tenants and the survivor with a conjunct and several obligation for payment of the rent.

(i) A lease may be competently granted to a company registered under the Joint-Stock Companies Acts as such, or to a corporation, but where it falls to be taken for the benefit of an unincorporated or unlimited company or a firm, it must be granted either in the name of the individual partners or to trustees for behoof of the firm or company.

(j) While the tenant's right under the lease is that of the use and possession of the subjects let, and of the annual produce thereof where such exists, the landlord's corresponding obligation is the warrandice of the tenant in the full and undisturbed possession of his right, and this warrandice is implied in all ordinary leases, whether expressed or not, unless the contrary shall have been stipulated. But see *Menzies*, 1888, 15 R. 470, and *Duke of Bedford and Others v. Earl of Galloway's Executor*, 1904, 6 F. 971.

(k) A tenant is not entitled without the consent of the landlord to change the use of the subject from that for which it was let (*Duke of Argyll*, 1861, 23 D. 1236; *Reid*, 1868, 6 M. 768, reversed 1870, 8 M. (H. L.) 110).

(l) Growing timber is reserved from an agricultural lease *ex lege*, and even where woods are let as an accessory of a farm the tenant is only at liberty to cut timber for repairing or erecting farm buildings and not for purposes of sale (*Touch*, 1664, M. 423 and 15,252). As to such right under a long lease, see *Gordon v. Rae*, 11 R. 67.

(m) With regard to the tenant's right to remove buildings, fences, &c., or other improvements executed by him upon the leasehold, reference may be made to the Agricultural Holdings (Scotland) Acts, 1883, 1900, and 1906, and also to the following cases: *Duke of Buccleuch*, 1871, 9 M. 1014; *Brand's Trs.*, 1876, 3 R. (H. L.) 16; *Miller*, 1894, 21 R. 658. A tenant is

not entitled to enforce a right of removal of buildings, even though this be authorised by his lease, when he has not fully implemented his own obligations thereunder (*Smith*, 1893, 21 R. 330).

(n) As a general rule of law a tenant is bound to make payment of the rent stipulated in his lease at the terms specified therein, and is not entitled to retain any part thereof on account of any illiquid claims for damages or otherwise which he may have against the landlord (*Drybrough*, 1874, 1 R. 909; *Humphrey*, 1883, 10 R. 647). But exceptions to this rule have been admitted (see cases of *Kilmarnock Gas Light Co.*, 1872, 11 M. 58; *Guthrie*, 1873, 1 R. 181; and *Davie*, 1876, 3 R. 1114).

(o) It has been held that the termination of a lease by the sequestration of the tenant is a bar to the tenant's claim for compensation under the Agricultural Holdings Act, 1883 (*Walker's Trs.*, 1886, 13 R. 1198); but not the voluntary renunciation of a lease duly accepted by the landlord (*Strang*, 1887, 14 R. 637).

(p) In the case of buildings erected subsequent to the leasing or working of minerals a question may arise, apart from express stipulation, as to whether liability for damage to these buildings is covered by the ordinary clause providing for payment by the tenant of "all surface damages" (see case of *Neill's Trs.*, 1880, 7 R. 741). Where, therefore, it is intended that the tenants shall or shall not be liable for damages to buildings erected after the date of the lease, this ought to be made a matter of express stipulation between the parties.

(q) The tenant under a lease of shootings and fishings has no power to sub-let unless such power is expressly given in the lease (*MacIntosh*, 1895, 22 R. 345).

(r) In a building-lease of ninety-nine years, granted under the Montgomery Act, the tenant was held entitled to cut growing timber on the land leased to him for purposes connected with the buildings erected thereon (*Gordon*, 1883, 11 R. 67).

(s) In the case of a long lease granted and duly registered under the Registration of Leases (Scotland) Act, 1857, the same will not be effectual against singular successors unless the proprietor by whom it is granted holds a title made feudally complete by infeftment.

(t) The right of a proprietor holding under entail to grant leases of lands or minerals is, unless otherwise prescribed by the Deed of Entail itself, limited to granting leases of ordinary duration, or to the extent expressly permitted by the Entail Statutes. If this power be exceeded it is equivalent to an alienation of the entailed estate, and as such may be set aside. But see case of *Forbes*, 1873, 11 M. 545, as to the validity of a lease granted for a longer period than that allowed by the entail, *quoad* the period allowed.

(u) The tenant is entitled to the exclusive possession of the subjects let, except as to any rights or privileges reserved, either *ex lege* or by the lease itself, to the landlord, and also to the unrestricted use thereof for the purposes of the lease as well as to the benefit of any servitude rights belonging thereto (*Wood*, 9th March 1809, F. C.; *Critchley*, 1884, 11 R. 475).

(v) There is an implied obligation upon the tenant, apart from any special stipulation in the lease, to pay the taxes and public burdens imposed by Parliament or by municipal or local authorities in respect of occupancy. In the case of a furnished house, however, while there has been no decision on the subject, the rule in practice, apart from stipulation, is that the landlord pays the whole taxes.

(w) Reference may be made to the case of *Lennox*, 1893, 21 R. 77, with

regard to the title of an heir to sue a removing in respect of non-payment of rent legally due prior to his succession, but conventionally payable subsequent thereto.

(z) A sub-tenant is not bound to remove without warning, and cannot be summarily ejected at the instance of the proprietor (*Robb*, 1895, 22 R. 885).

(y) Reference may be made to the cases of *Henderson*, 1888, 15 R. 859, and *Webster*, 1892, 19 R. 765, relative to the landlord's liability to execute necessary repairs upon a house, and the tenant's right to abandon possession if this is not done. See also section 6 of the Agricultural Holdings Act, 1906.

The Agricultural Holdings Act, 1906, which, however, does not come into operation until January 1, 1909, has introduced certain important modifications in the rights and relations of landlord and tenant as previously subsisting.

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## SECTION I

### SIMPLE LEASE, WITH VARIATIONS IN FORM ARISING FROM POSITION OR CHARACTER OF GRANTER

#### 1. Form of a Simple Lease.

IT IS CONTRACTED and AGREED between A (*designation*), heritable proprietor of the subjects after mentioned, *on the one part*, and B (*designation*) *on the other part*, in manner following: THAT IS TO SAY, the said A has SET, and in consideration of the rent and other prestations after mentioned, hereby LETS to the said B and his heirs, but expressly excluding heirs-portioners (the eldest heir-female succeeding always without division), and also sub-tenants and assignees, legal or conventional, ALL AND WHOLE (*here describe the subjects let*), and that for the space of                      years from and after the term of                      19 : WHICH LEASE the said A BINDS and OBLIGES himself, his heirs and successors, to warrant to the said B and his foresaids at all hands: FOR WHICH CAUSES, and on the other part, the said B BINDS and OBLIGES himself, and his heirs, executors, and successors whomsoever, to make payment to the said A, and his heirs, executors, or assignees, of the sum of £                      yearly, in name of rent, and that at two terms in the year,                      and                      , by equal portions, beginning the first payment thereof at the term of                      , and the next payment at the term of                      following, and so forth half-yearly and termly thereafter during the currency of this lease, with a fifth part more of each term's payment of liquidate penalty in case of failure, and the interest of each of

the said termly payments, at the rate of five per centum per annum, from the time the same shall respectively become due during the not-payment thereof: AND the said B BINDS and OBLIGES himself and his foresaids to flit and remove themselves, their goods, gear, and effects, furth of and from the subjects hereby let, at the expiry of this lease, and that without any previous warning or process of removing to be used for that effect: AND LASTLY, both parties BIND and OBLIGE themselves and their foresaids to implement and perform their respective parts of the premises to each other, under the penalty of £            sterling, to be paid by the party failing to the party performing or willing to perform, over and above performance: AND they consent to registration hereof for preservation and execution.—  
IN WITNESS WHEREOF, &c.

In the above example the grantor is designed "heritable proprietor of "the subjects," but in contracting with a proprietor in possession, care should be taken by the tenant to ascertain what is his title of possession. A conjunct fiar, a liferenter, or one whose wife possesses a liferent right in the property, may appear from the state of his possession to be absolute proprietor, yet in the event of his predeceasing, any lease granted by him will fall.

## 2. Leases by Tutors.

IT IS CONTRACTED and AGREED between the parties following—viz., A and B (*designations*), tutors of C (*designation*), nominated to him by D (*designation*), his father, conform to Deed of Nomination by the said D, dated           , and recorded           , *on the one part, &c.*

The nature of the tutors' appointment will of course regulate the recital as well as the manner in which they are authorised to act. Where the consent of a *sine quo non* is required the lease will run thus:—

BETWEEN A and B (*designations*), being a quorum of the tutors named to C (*designation*), by D (*designation*), his father, the said A, being declared to be one of the quorum, and *sine quo non*, by Deed of Nomination, dated           , &c.

The lease will let the subjects in common form, and the clause of warrandice will bind the pupil in absolute warrandice, and the tutors in warrandice from fact and deed. The rent will be payable to the tutors or their factors for behoof of the pupil. It will, however, be observed that the endurance of the lease cannot exceed the period of the office of tutory, unless the tutors be vested with special powers to grant leases of a longer endurance.

### 3. Leases by Minors.

A minor, if without curators, can grant leases, but if he has curators, their consent is requisite. As in either case the lease may be reduced by the minor on attaining majority, on the head of *lesion*, it is advisable that in the case of farms these should either be let by public roup, or that care should be taken to preserve evidence to show that the best rent has been obtained which the circumstances permitted. The lease may be for the ordinary period of duration, and need not be limited to the period of minority.

When the lease is granted by a minor with consent of his curators, and where one of the curators in addition is declared to be a *sine quo non*, it may be expressed as follows :—

IT IS CONTRACTED and AGREED between A (*designation*), heritable proprietor of the subjects after mentioned, with the special advice and consent of B, C, D, and E (*designations*), accepting and acting curators nominated and appointed to the said A by his father, the deceased F (*designation*), by his Trust-Disposition and Settlement, dated , and recorded in the Books of Council and Session the , by which Trust-Disposition and Settlement it is, *inter alia*, declared that a majority of the curators thereby nominated shall be a quorum of whom the said B shall always be one, *on the one part*, and G (*designation*) *on the other part*, in manner following: THAT IS TO SAY, the said A, with advice and consent foresaid, in consideration of the rent and other prestations after mentioned, has SET, and for himself and his heirs and successors hereby LETS to the said G, and his heirs, &c.

Where curators have not been nominated to the minor, but he has chosen them in usual form, the narrative of their title will be altered accordingly.

### 4. Leases by Trustees.

IT IS CONTRACTED and AGREED between the parties following—viz., A, B, and C (*designations*), surviving and accepting trustees, acting under Trust-Disposition and Settlement executed by the deceased D (*designation*), dated , and with codicils annexed dated , all recorded in the Books of Council and Session the day of (the said A, B, and C and their successors in office being hereinafter denominated “the said trustees”), *on the one part*, and H (*designation*) *on the other part*:

THAT IS TO SAY, the said trustees have SET, and in consideration of the rent and other prestations after specified hereby LET, to the said H and his heirs, &c. (*The warrandice by the trustees will be from fact and deed only, and the trust-estate will be bound in absolute warrandice.*)

### 5. Leases by Heirs of Entail.

By the Statute 10 Geo. III. c. 51, it is, *inter alia*, enacted :—

“That it shall be in the power of every proprietor of an entailed estate, to grant leases of land for the purpose of building, for any number of years not exceeding ninety-nine years, provided that not more than five acres shall be granted to any one person, either in his own name, or to any other person or persons in trust for him; and that every such lease shall contain a condition that the lease shall be void if one dwelling-house at least, not under the value of £10 sterling, shall not be built within ten years from the date of the lease, and that the said houses shall be kept in good, tenantable, and sufficient repair, and that the lease shall be void whenever there shall be a less number of dwelling-houses than one of the value aforesaid, and kept in such repair, standing upon the ground so leased.”

By the Statute 6 & 7 Will. IV. c. 42, s. 1, it is, *inter alia*, enacted that—

“Notwithstanding any prohibitory, irritant, and resolute clauses contained in any entails already made and established, or which may hereafter be made and established, pursuant to the directions of the said Act passed in the Parliament of Scotland in the year 1685, it shall be lawful for the respective heirs of entail in possession to grant tacks of any parts of the lands, estates, or heritages therein contained, for the fair rent of such lands or heritages at the period of letting, either by public auction or private bargain, and notwithstanding any prohibition against diminution of the rental, for any period not exceeding twenty-one years, and to grant tacks of any mines and minerals contained in such lands and estates for any period not exceeding thirty-one years, Provided always that nothing herein contained shall authorise any heir of entail in possession of any entailed lands, estates, or heritages, to take any grassum or valuable consideration other than the tack-duty or rent for granting any tack, or to grant any tack of the home-farm, nor of the mansion-house and offices, or of the garden, lawn, park, or policy attached thereto, for any period beyond his own life; And in case any such grassum or consideration shall be taken, or in case any tack hereby prohibited shall be granted, such tack shall be null and void.” Reference may also be made to section 2 of this statute, and to 45 & 46 Vict. c. 53, ss. 4, 6, 8 and 9.

Further provisions as to leases will be found in the Acts 1 & 2 Vict. c. 70, s. 1; 3 & 4 Vict. c. 48; 11 & 12 Vict. c. 36, ss. 4 and 24; 16 & 17 Vict. c. 94, ss. 6 and 13; 31 & 32 Vict. c. 84, ss. 3 to 5; and 38 & 39 Vict. c. 61, s. 6.

There is no peculiarity in the form of such leases, and the specification of the various conditions which require to be attended to is so express in the statutes that there can be no difficulty in framing the clauses necessary to give effect to them in practice. Reference may be made under this head

to the cases of *Farquharson, Petitioner*, 9 Macph. 66; *Montgomerie v. Vernon*, 23 R. 465; and *The Earl of Galloway v. The Duke of Bedford and Others*, 4 F. 851.

#### 6. Lease by Wife with Consent of her Husband.

IT IS CONTRACTED and AGREED between A, wife of B (*designation*), heritable proprietrix of the subjects after mentioned, with the special advice and consent of her said husband, and the said B for himself and as taking burden on him for his said wife, and by them both with joint consent and assent, *on the one part*, and C (*designation*), *on the other part*, in manner following: THAT IS TO SAY, the said A, with advice and consent of her said husband, as aforesaid, IN CONSIDERATION, &c.

#### 7. Lease by Factor and Commissioner.

IT IS CONTRACTED and AGREED between A, factor and commissioner for M (*designation*), conform to factory and commission granted by the said M in his favour, dated \_\_\_\_\_, and registered in the Books of Council and Session \_\_\_\_\_, whereby he, as factor and commissioner foresaid, has full power to enter into these presents in the manner and to the effect after written (the said M being heritable proprietor of the subjects and others after mentioned, and he and his heirs and successors in the said subjects being hereinafter referred to, when not named as "the landlord") *on the one part*, and B (*designation*) (the said B and his heirs and successors being hereinafter referred to, when not named as "the tenant") *on the other part*, in manner following: THAT IS TO SAY, the said A as factor and commissioner foresaid and for and on behalf of the said M, and IN CONSIDERATION OF, &c. (*The warrandice clause by the factor and commissioner will be from fact and deed only, and will bind his principal in absolute warrandice.*)

#### 8. Leases by Judicial Factors.

IT IS CONTRACTED and AGREED between A (*designation*), judicial factor, nominated and appointed, conform to act and decree by the Lords of Council and Session in his favour dated the \_\_\_\_\_ day

of \_\_\_\_\_, to M (*designation*), heritable proprietor of the subjects after mentioned (the said M and his heirs and successors in the said subjects being hereinafter referred to, when not named, as "the proprietor"), *on the one part*, and B (*designation*) (hereinafter referred to, when not named, as "the tenant," which term shall include where appropriate the heirs and successors of the said B), *on the other part*, in manner following: THAT IS TO SAY, the said A as judicial factor aforesaid, IN CONSIDERATION of the rent, &c. (*The warrandice clause will bind the judicial factor from fact and deed only, and the ward and his successors in absolute warrandice.*)

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## SECTION II

### AGRICULTURAL LEASES

#### 1. Lease of an Arable Farm.

Landlord  
and tenant.

IT IS CONTRACTED and AGREED between A (*designation*), heritable proprietor of the lands and others hereinafter let (he and his heirs, successors, and assignees being hereinafter referred to and designated, when not named, as "the proprietor" or "the landlord"), *on the one part*, and B (*designation*) (he and his heirs and successors being hereinafter referred to and designated, when not named, as "the tenant"), *on the other part*, in manner following: THAT IS TO SAY, the said A, in consideration of the rent and other prestations after written, and under the reservations, conditions, provisions, and declarations after expressed, hereby lets to the said B and his heirs, excluding heirs-portioners (the eldest heir-female, when the succession would devolve by law on heirs-portioners succeeding without division), and also excluding sub-tenants and assignees<sup>(a)</sup>, legal or voluntary, and creditors or managers for creditors in any form, unless with the consent in writing of the proprietor; but with power to the tenant to destine this lease by will to any member of his family or to his widow, subject to the written approval of the proprietor, and provided that the legatee shall possess the necessary means of stocking the farm, which arrangement relative to the bequest of the lease shall

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(a) As to lease to partners of a company, see *Walker, &c. v. M'Knight, &c.*, 13 R. 599.

supersede the provisions of the Agricultural Holdings (Scotland) Acts as to the bequest of leases, which are hereby superseded accordingly by mutual consent, ALL AND WHOLE the lands and farm of \_\_\_\_\_, Lands let with the houses, buildings, yards, and pertinents, lying in the parish of \_\_\_\_\_ and County of \_\_\_\_\_, as the same are shown on the plan or sketch hereto annexed, and were formerly tenanted and possessed by C; declaring that \_\_\_\_\_ acres or thereby of the said farm, as coloured red, and being the fields or enclosures numbered \_\_\_\_\_ on the said plan or sketch, shall be deemed to be the arable land of the farm, and subject to the rotation of cropping or mode of cultivation after provided, and \_\_\_\_\_ acres or thereby, as coloured green, and being the fields or enclosures numbered \_\_\_\_\_ on the said plan or sketch, shall be deemed to be permanent pasture, and shall not be broken up at any time during the lease; and that for the space of \_\_\_\_\_ years from and after the term of Martinmas 19 : BUT DECLARING that either the proprietor or the tenant shall, subject to the provision after written, have the privilege or option of a break at any term of Martinmas which shall occur during the currency of this lease; that is to say, shall have a right and power to declare this lease to be at an end, or to relinquish or renounce the same at the said term, provided the party desirous of exercising such privilege shall give not less than three years' previous notice in writing to the other party of his intention to take advantage of the said break, and provided that before the relinquishment or renunciation of the lease shall become effectual, all rents and arrears of rents due by the tenant shall be paid to the proprietor, and all the other obligations incumbent upon the tenant, whether during the tenancy or on his outgoing, or otherwise, shall be fulfilled: RESERVING to the landlord during the currency hereof—(First) Power and liberty at any time to resume possession of such part or parts of the lands hereby let, to an extent not exceeding \_\_\_\_\_ imperial acres, as may be required for the purpose of planting, feuing, or otherwise, the tenant being entitled to a yearly deduction from the rent on account of such land as may be resumed at a rate to be agreed upon between the parties, and failing agreement, then at a rate to be fixed by two arbiters mutually chosen as after mentioned, but under the obligation on the landlord, at his own expense, to enclose any ground so resumed with a suitable fence, the tenant being thereafter bound, without compensation, to keep the said fence in good order and repair during

Moveable  
break.

Reservations.  
(1) Power  
to resume  
part of  
lands.

(2) Power  
to work  
minerals.

the currency of the lease; (*Second*) All iron, coal, limestone, freestone, sand, gravel, clay, and all other minerals, metals, and fossils in the said farm, with full power and liberty to himself or others to work, win, and carry away the same, and to take and occupy ground in connection therewith, erect buildings and works necessary therefor, and to carry the said minerals under or over the lands hereby let, as also to build houses, sink pits, make roads and railroads or tramways, canals, reservoirs, aqueducts, limekilns, and erect machinery of every description, and to perform and carry out all operations necessary for working or manufacturing the same, on payment to the tenant of such surface damages as may be thereby caused to the lands hereby let, as such damage shall be ascertained by arbitration as after

(3) Power  
to alter  
marches,  
&c.

mentioned; (*Third*) Power to alter or straighten marches and excamb ground with any neighbouring proprietor or tenant, the value of any ground that may be taken off or added to the said farm by such operations being ascertained by arbitration as aforesaid, and deducted from

(4) Right to  
plantations,  
roads, &c.

or added to the rent hereinafter stipulated; (*Fourth*) The exclusive right to all trees, woods, and plantations upon the said farm hereby let, and a right-of-road to and from the same, as also the right of pasturing or cutting the grass within any plantation belts or clumps, and power to alter existing roads and burns, and make drains, ditches, and fences, as also the right to use all roads or footpaths within or through the said farm, and the property and use of all water in streams or springs rising in or traversing the lands, subject to the proper use thereof by the tenant for the purposes of the farm only; (*Fifth*) In so far as not inconsistent with the provisions of the Ground Game Act, 1880, the whole game, hares, and rabbits on the said lands, and the fish in the rivers and streams therein, with the exclusive privilege of hunting, fowling, and fishing on the same, by himself or by others having his authority, the tenant being hereby bound to protect the plantations and fences, and also the game on the lands, and to warn off trespassers, and not to keep or allow to be kept by his servants or others any dogs

(5) Right  
to game.

not required for the purpose of attending to the sheep or cattle on the said farm: AND it is hereby declared that in fixing the amount of the annual rent payable for the said farm as hereinafter stipulated there has been taken into account and allowed for between the parties, in terms of the Agricultural Holdings (Scotland) Act, 1906, the sum of £            per annum in respect of damage to crops by game which

the tenant has not the right to kill, and which sum shall be taken into account in estimating the compensation (if any) due to the tenant in respect of damage done by game as aforesaid: AND it is hereby specially provided and declared that no measurements or other particulars regarding the extent, acreage, or boundaries of the farm hereby let, whether contained in advertisements, conditions of let, or otherwise, nor the accuracy of the plan or sketch hereto annexed, are warranted by the landlord, and that the said tenant shall be held to have satisfied himself as to the extent and boundaries of the said farm, and also as to all other particulars relative thereto, and that no claim shall be competent at the instance of either party against the other in the event of its being hereafter found that the subjects either exceed or fall short of the measurement to which they are at present believed or understood to extend: WHICH tack, with and under the conditions, reservations, provisions, restrictions, and declarations before and after written, the said A binds and obliges himself, and his heirs and successors in the said lands, to warrant at all hands: FOR WHICH CAUSES, and *on the other part*, the said B binds and obliges himself, his heirs, executors, successors, and representatives whomsoever, to pay to the said A, his heirs, executors, or assignees, or to his or their factor for the time being, the sum of £ sterling, in name of yearly rent, and that half-yearly, during the currency hereof in equal portions at two terms in the year, Whitsunday and Martinmas, beginning the first term's payment at the term of Whitsunday 19 , and the next term's payment at the term of Martinmas following, in full of the first year's rent under this lease, and so forth half-yearly and termly thereafter during the occupancy of the lands hereby let, with a fifth part more of each term's rent of liquidate penalty in case of failure in the punctual payment thereof, and the interest of each term's payment at the rate of five per centum per annum from the respective terms of payment thereof during the not-payment: DECLARING that the whole of the rent of the last year's occupation, or last year prior to the termination of notice of a break under these presents, shall be payable one month prior to the term of Martinmas in that year, and before any part of the stock or crop has been removed from the ground, or security shall be given to the landlord therefor to his satisfaction prior to such removal, in addition to any other security provided for under these presents: AND FURTHER, the tenant agrees,

Declaration as to the extent and acreage of the farm.

Warrant-dice.

Rent.

Terms of payment.

Security for rent.

if required by the landlord, to pay the premium on a bond of security in favour of the landlord to be granted by some respectable insurance company for a sum equivalent to a year's rent, and shall duly exhibit the receipt, showing that such premium has been paid for the ensuing year, at each term of Martinmas when entering upon another year's possession of the subjects hereby let: AND FURTHER, the tenant binds and obliges himself and his heirs, executors, and representatives whomsoever, to pay the tenant's proportion of all public and parochial or local burdens and assessments incumbent upon him by law, and also to perform free of charge the carriages or services effeiring to the farm and the rebuilding or repairing of parish buildings: AND, subject to the provisions of the Agricultural Holdings Acts, it shall not be competent to the tenant to make any claims for damages or otherwise against the landlord in any year of this lease whereof the rent has been paid and unconditionally discharged: DECLARING nevertheless that the tenant shall always be bound to pay his rent in full in the first instance, irrespective of any claims for damages or otherwise, and shall not be entitled to retain any part thereof on account of such claims; but he may intimate the said claims to the landlord or his factor along with or prior to the payment of said rent if he shall think proper; AND FURTHER, the tenant binds and obliges himself to keep the stock and crop on the farm and lands hereby let constantly insured against loss by fire with some well-established insurance company, to be approved of by the proprietor, to the value of at least £ , and to exhibit receipts for the payment of the premiums thereon annually to the proprietor or his factor at the term of Martinmas: AND FURTHER, the tenant binds and obliges himself and his foresaids to pay to the proprietor at the term of Martinmas yearly, along with and in addition to the proportion of rent then payable as aforesaid, one-half of the premium of insurance on a policy against fire for the sum of £ to be effected in name of the proprietor on the whole buildings on the farm hereby let with such insurance company as the proprietor may choose, and in the event of the said houses and buildings being destroyed wholly or partially by fire, it is hereby agreed that the landlord shall not be bound to expend in the repairing or rebuilding thereof any larger sum than may be recovered from the insurance company, and that the tenant shall perform all carriages connected with such repairs or rebuilding

Burdens.

Insurance.

free of charge: FURTHER, the tenant binds and obliges himself personally to reside or, in the event of his having a residence elsewhere, to provide a competent substitute to reside personally upon the farm, and to have and keep continually a sufficient stocking of every kind thereon, which shall be *bona fide* his (the tenant's) own property: AND in respect the said A has agreed to lay out, at the sight of his factor, the sum of £                      on the repair or renewal of the steading and fences on the said farm (*or otherwise, specify the repairs to be executed by the landlord*), the said B hereby binds and obliges himself and his foresaids to pay interest on the said sum so expended, at the rate of five per centum per annum from the time when the same shall have been expended during the currency of this lease, and also to perform all carriages necessary in connection with the improvements on the said steading and fencing free of charge (*or otherwise, as the case may be*): AND (*upon the said repairs or renewals being executed*) the said B hereby accepts of the whole houses, buildings, fences, dykes, gates, roads, drains, water-courses and ditches, upon the farm and lands hereby let as in good and sufficient tenantable condition and repair, and binds and obliges himself and his foresaids to maintain and uphold the same in the like condition and repair during the currency of the lease, and to leave them so at their removal from the lands (fair tear and wear alone excepted); and in particular and without prejudice to the generality of the foresaid obligations as to buildings and repairs, the tenant shall be bound to white-wash all harled buildings once in every two years, to overhaul the roofs of all buildings annually, and to paint the outside wood-work with at least two coats of good oil-paint once in every four years; and failing his delivering over the said houses, buildings, fences, dykes, gates, roads, drains, water-courses, and ditches in the condition and repair above specified at the time of his removal from the said farm and lands, the tenant binds and obliges himself to pay to the landlord whatever sum may be required to put them into that state as the same shall, failing agreement between the parties, be fixed by arbitration as after mentioned: AND the tenant hereby undertakes at least once in every two years to cut the hedges, and once in every three years or oftener, if necessary, to scour the ditches, open drains and water-courses, and to keep the outlets of all drains and ditches made and to be made on the farm and lands hereby let free from obstruction of every kind and in

Residence  
and stock-  
ing.

Outlay for  
repairs.

Upkeep of  
the build-  
ings.

Hedges and  
ditches.

constant good order and repair, and also to keep the arable lands at all times free from whins, thistles, briars and weeds: AND it is hereby specially provided and agreed that the tenant shall from year to year during his occupancy of the lands hereby let either drain, or re-drain by means of surface-drains, not less than one-sixth of the whole drainable area of the farm, and that at his own expense, and shall regularly during the month of \_\_\_\_\_ report to the landlord or his factor that such drainage has been done; and upon the termination of his tenancy the landlord agrees to repay the tenant or his representatives for unexhausted improvements under the head of drainage, which shall have been executed during the last three years of his tenancy (whether the same shall have been terminated by the natural issue of the lease or otherwise), a sum estimated according to the scale in Schedule A annexed hereto (a):

**Drainage.**

**Management and cropping.** AND FURTHER, with respect to the management and cropping of the said farm, the tenant binds and obliges himself and his fore-saids to crop and cultivate the arable lands hereby let in accordance with the rules of good husbandry, and particularly to cultivate, crop and manure the same regularly, and so as not to injure or deteriorate them, and he shall not take two white crops in succession off any part of the said lands (unless with the special consent in writing of the proprietor), but shall so manage the same during the currency of this lease, that as nearly as possible one-sixth of the lands shall be in barley, wheat, or oats after green crop thoroughly cleaned, and the land properly manured and sown out with at least eight lbs. of red, white, and yellow clover, and one and a half bushels of the best perennial rye-grass per acre, one-sixth in oats after lea, and one-sixth in green crop or summer fallow—not more than one-third of the green crop being potatoes—and all properly cleaned, drilled and manured: AND the remaining three-sixths of the arable land shall be in grass, one, two, and three years old; with liberty, however, to the tenant to have more than the above proportions in grass, provided the same be used for pasture only: AND the crops shall always be in whole fields and not in detached patches or portions of fields: AND the tenant binds and obliges himself and his foresaids, in case he or they shall cause any injury or deterioration to the holding by acting contrary to or failing to fulfil any of the preceding regu-

**Additional rent.**

(a) As to plea of compensation, see *Jaffray's Trustee v. Milne*, 24 R. 602; *Craig's Trustee v. Lord Malcolm*, 2 F. 541.

lations, to pay to the proprietor (subject to the provisions of the Agricultural Holdings (Scotland) Act, 1900, and the Agricultural Holdings Act, 1906) five pounds of additional rent yearly for each and every acre that shall be cultivated or treated in a different manner from the plan of management above described; which additional rent shall be paid over and above and along with the rent before stipulated in the year or years in which said deviation shall take place; and the tenant binds and obliges himself and his fore-saids to refer to arbitration, as after provided, the ascertainment of the extent of the deviation, and the damage, if any, thereby occasioned, and no discharge of the ordinary rent shall be held as implying a discharge of the additional rent unless specially mentioned in the discharge: AND the tenant and his foresaids shall be bound during the month of

Tenant's  
annual  
report.

in each year to report generally to the landlord or his factor, and that in writing, either under his own hand or the hand of his authorised substitute, upon the following matters, viz.:—(*First*) As to the state of the farmhouses, office-houses, and other buildings on the farm; (*Second*) As to the state of the fences (both march and division), farm roads, road drains, ditches, &c.; (*Third*) As to the surface and other farm drains and improvements that may have been made during the preceding year; and (*Lastly*) As to the state of cultivation and stocking of the farm, the amount of produce sold or removed therefrom, and the amount and nature of the manures applied to the lands: DECLARING that the landlord shall be entitled personally or through his factor or other authorised agent, after examining the report, to take such steps as he may consider necessary by inspection or otherwise to satisfy himself of the accuracy of the same; and should such report at any time prove to be unsatisfactory, or not be forthcoming, it shall, notwithstanding anything contained in the said Agricultural Holdings (Scotland) Act, 1906, be competent to the landlord to avail himself of the break before provided for, and to declare the lease at an end by giving the requisite notice to the tenant stipulated in that event: AND FURTHER, the tenant binds and obliges himself and his foresaids to grind all his grind-able corn and barley at the mill of , and to pay to the miller the customary dues, provided these dues shall not exceed the usual charges in the district for grinding such grain: AND FURTHER, the tenant shall consume the whole turnips, dung, straw, or fodder raised upon the farm and lands hereby let, upon the

Thirlage.

Tenant not  
to sell  
turnips, &c.,  
raised on  
the farm.

Sowing  
grass seeds,  
&c.

Dung.

Term of  
removal.

Stock.

said lands (a): AND in the last year of this lease the landlord or the incoming tenant shall be entitled to sow at the proper time any part of the lands then under white crop after green crop with grass seeds with the tenant's waygoing crop, which grass seeds the tenant shall be bound to harrow and roll in free of charge, and the tenant shall not be at liberty to pasture the young grass of the last year's crop, but shall be bound to preserve the same from damage by pasturage or otherwise: AND with regard to the manure made after turnip seedtime of the last year of this lease, the tenant and his foresaids shall be bound to deliver up the same to the landlord or incoming tenant, on payment of a price therefor to be fixed by arbitration as after mentioned (b), but the whole straw or fodder not made into manure, and manure made previous to that time, and not applied to the lands hereby let, shall become the property of the landlord free of charge; and the tenant shall, prior to his removal from the farm at the termination of this lease, be bound, if required to do so, to deliver up to the landlord or incoming tenant the turnip crop that shall be growing upon the lands in the last year's possession under this lease, or such portion thereof as the landlord or incoming tenant may require, and that at a price to be fixed by valuation as after mentioned; AND it is hereby declared that the term of removal from that part of the farm and lands hereby let which shall be in tillage in the last year of this lease shall be at the separation of the crop of that year from the ground of each respective field, and from the houses and the grass and turnip land at the term of Martinmas being the twenty-eighth day of November following, but with liberty to the tenant, if he shall desire to do so, to continue in occupation of the turnip land of that year until the fifteenth day of December immediately following the said term of Martinmas: AND FURTHER, the tenant binds and obliges himself and his foresaids not to keep larger stocks of sheep and cattle during the last year of his lease than was customary in the two immediately preceding years, and at the expiry or sooner termination hereof to hand over to the proprietor or incoming tenant the whole stock of sheep then properly upon the said farm and lands, and that at a price to be fixed by valuation as after

(a) As to straw of waygoing crop, see *Lord Elbank v. Scott*, 11 R. 494. See also the Agricultural Holdings (Scotland) Act, 1906.

(b) See *Graham v. Mill*, 6 F. 886.

mentioned: AND the tenant binds and obliges himself and his foresaids <sup>Whins.</sup> not to burn or root up or permit others to burn or root up whins on any part of the farm and lands hereby let, other than the arable lands, unless with the special authority of the proprietor or his factor, to whom full power is reserved to enter upon the said farm for the purpose of burning or rooting up said whins accordingly at any time they may think proper, the tenant being bound to pay to the proprietor the expenses so incurred at the immediately succeeding term of Whitsunday along with his rent, and in the event of the tenant burning or rooting up whins without such authority, he obliges himself to pay the sum of £5 sterling of additional rent for each acre or part of an acre so burned or rooted up without leave: BUT notwithstanding the terms of the preceding clause the tenant shall be entitled and bound to keep all arable lands usually tilled free from whins: AND in case the tenant or his foresaids <sup>Bankruptcy.</sup> shall at any time during this lease become notour bankrupt, or be sequestrated, or if a poinding of his or their effects shall be executed, or if he or they shall voluntarily divest themselves of their estate or effects by trust-deed for behoof of creditors or otherwise, or shall allow one term's rent to remain unpaid when the next term's rent shall have become due, then, and in any of these events, it shall be in the power of the proprietor to put an end to this lease without any declarator or other process of law to be used for that effect, and to remove the tenant and his foresaids from the possession of the lands hereby let as if this lease had come to its natural termination, and that without prejudice to the proprietor's claim for past, due, or current rents; and the tenant hereby consents that summary diligence shall pass hereon for removing him and his foresaids from the lands hereby let in any of the events foresaid: AND FURTHER, the tenant binds and obliges himself and his foresaids <sup>Removal.</sup> to flit and remove themselves, their families, dependants, servants, cotters, goods and gear, furth of and from the whole lands and others hereby let at the expiration of this lease, and that without any legal warning or process of removing being used against them for that effect; and in case of their failing so to do the tenant obliges himself and his foresaids to pay to the landlord the yearly rent of £ sterling for every year or part of a year he or they shall occupy any part of the said lands and others after the respective term of removal above specified, and which increased rent

shall be payable at the terms above mentioned, and with interest as aforesaid, and shall not be considered as a penalty, nor be subject to modification by any judge, upon any ground whatever, the same being hereby expressly declared an essential condition of this contract, but without prejudice to the landlord's right to insist in a

Arbitration. summary process of ejection as accords of law: AND it is hereby further agreed and declared that in all matters before mentioned stipulated to be ascertained and fixed by arbitration, or in the event of any dispute or difference arising between the landlord and tenant under this lease, whether hereinbefore specially referred to arbitration or not, the same shall be and is hereby referred to the final sentence and decree-arbitral of a single arbiter to be mutually chosen by the parties, and the decision of such arbiter shall be final and binding upon both parties; and if the parties shall disagree in the choice of an arbiter, then it shall be competent to either party to apply to the Board of Agriculture to name an arbiter in terms of the provisions of the said Agricultural Holdings Act, 1906, whose award shall

Implement. be final and binding upon both landlord and tenant: AND LASTLY, the parties oblige themselves and their foresaids to implement their respective parts of the premises to each other under the penalty of £ sterling, to be paid by the party failing to the party observing or willing to observe their part of the premises over and above performance: AND they consent to registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c. (*testing clause in usual form*).(a)

Testing clause.

#### SCHEDULE A REFERRED TO IN THE FOREGOING LEASE.

##### *Compensation for Drainage.*

1. All claims to be vouched by the tradesmen's or contractors' accounts, bearing on their face the date of the supply of material and execution of the work, and also of payment; or, in the case of labourers, the receipts for the wages showing the date of the execution of the work.

2. Compensation shall be paid to the tenant, in terms of the lease, according to the following scale, viz. :—

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(a) If it is desired to exclude the provisions of the Agricultural Holdings Acts as to compensation for unexhausted improvements, &c., and to substitute others in their place, reference may be made to p. 426 hereof and forms of clauses there given.

- (a) Nine-tenths of outlay incurred during the last year of occupation ;
- (b) Five-tenths or one-half of outlay incurred during the second last year of occupation ; and
- (c) Two-tenths or one-fifth of outlay incurred during the third last year of occupation.

## 2. Variations for Whitsunday Entry.

When the entry to the farm is at Whitsunday the following clauses may be inserted, and the clauses as to dung, sowing of grass seeds, &c., and the term of removal, in the preceding style will in that case be omitted :—

AND the tenant obliges himself carefully to collect and preserve <sup>Dung.</sup> for the use of the proprietor or incoming tenant the whole dung to be made on the farm and lands hereby let from the time of the input of the last green crop under this lease till the term of removal, and if required to plough and harrow the lands falling to <sup>Ploughing.</sup> be in green crop at the expiry of this lease, and to perform any other usual labour that may be pointed out by the proprietor's factor, for which manure and labour the tenant shall be entitled to payment from the proprietor or incoming tenant according to the valuation of an arbiter as after mentioned: BUT the tenant shall not have any right to the fallow or green crop of the year (*insert last year of lease*) as part of his last or waygoing crop, the proprietor or incoming tenant being entitled to enter upon possession of the green crop break at 1st February in that year: AND it is further declared that the land- <sup>Rye-grass and clover seeds.</sup> lord or incoming tenant shall have right to sow rye-grass and clover seeds with any part of the last crop which he shall think proper without making any payment therefor, the tenant being bound to harrow and roll in the same free of expense; or if the latter shall, on being requested to do so, provide and sow the rye-grass and clover seeds, he shall be repaid the price thereof by the proprietor or incoming tenant upon producing receipts therefor: AND the tenant shall also be entitled to the price of the rye-grass and clover seeds used by him in sowing out the regular portions of his last white crop but one under this lease, and the hay produced therefrom shall belong to the proprietor or incoming tenant without any further payment, the tenant being bound to preserve the land so sown out from being pastured in any manner from the time of the separation of that white

Waygoing  
crop.

crop from the ground till the term of removal: AND he shall hain and preserve the natural meadow lands from being pastured in any way from the first day of March in the last year of this lease to the term of removal: BUT notwithstanding any of the preceding stipulations, the proprietor or incoming tenant shall have it in his option to perform the said labour by his own servants, horses and implements, accommodation for the horses being provided in the farm buildings by the tenant under this lease during the last half-year of the lease: FURTHER, the tenant binds himself and his foressaids to take over from the present tenant of the farm, at a valuation to be fixed as after mentioned, the last crop of grain under his (the said outgoing tenant's) lease, and also the manure, and at his removal similarly to sell to the proprietor or incoming tenant, one of whom shall be bound to take the same, the last crop of grain under this lease.

### 3. Exclusion of Provisions of Agricultural Holdings Acts as to *Compensation for Improvements, &c.*

Where it is desired to exclude the provisions of the Agricultural Holdings Acts as to compensation for improvements the following clauses may be inserted in the lease:—

AND it is hereby declared that the provisions of the "Agricultural Holdings (Scotland) Acts, 1883 to 1906," shall be excluded from this lease, in so far as such exclusion is not expressly prohibited by these Acts, or any of them, and the following provisions shall be held as coming in lieu and place of the provisions of the said Acts as to compensation for improvements, drainage, and otherwise to the extent and in the manner after provided: THAT IS TO SAY—(*First*) Notices requiring to be given to the landlord in terms of section 4 of the said Act of 1883, or of any subsequent Act amending, repealing, or re-enacting the provisions of said section, are hereby dispensed with, and shall have no force or effect between the parties hereto during the currency of the lease, and in lieu of the provisions of that Act as to drainage, it is hereby stipulated that no drainage shall be undertaken by the tenant without the previous consent in writing of the landlord or his factor for the time being; but if such consent be given, the landlord shall supply tiles free of charge laid down at the

nearest railway station to the farm, and the tenant shall perform the carriages and lay the drains at his own expense, and without compensation being claimable therefor at the termination of the lease: (*Second*) In the case of corn produced and consumed upon the holding, and in respect of which any claim for compensation is to be made, the tenant shall keep a book showing a regular account of the weight, quality, and consumption of the same upon the farm: (*Third*) Compensation shall be payable to the tenant at the termination of his tenancy in respect of improvements effected by him during his occupancy, and which improvements shall be such as are specified in Part III. of the First Schedule to the said Act of 1900, but that always in conformity with the conditions following, viz.—(1) The outlay by the tenant, and his management and cultivation of the farm must be such as shall have increased upon the whole the value of the farm as an agricultural subject, and any sum due to the tenant shall be liable to the reductions, deductions, allowances, and claims specified in the said Acts, or any of them, and be subject to the provisions of the said Acts thereanent, so far as then still in force; and also to such other deductions and reductions as the arbiter appointed shall declare to be reasonable and proper in the circumstances; (2) the tenant shall be bound to preserve samples of all manures applied to the lands, and also of all feeding stuffs consumed on the farm, and to exhibit to the landlord, or his factor for the time being, vouchers to instruct the amounts paid by him or them for those manures and feeding stuffs in respect of which compensation may be claimed by him or them as aforesaid at the termination of this lease, and that within three months of the purchase of same; and no compensation shall be allowed for improvements of the nature before specified, unless such samples shall have been preserved and such vouchers exhibited as aforesaid, and unless the materials used shall have been of good quality, and shall have been skilfully and judiciously applied to the farm, and also unless the tenant shall, when presenting his claim for compensation, produce full and detailed statements of all crops sold off or removed from the farm during the last two years of his tenancy; (3) subject to the foregoing conditions the tenant, on quitting the farm at the termination of his tenancy, shall receive such proportion of his outlay in respect of the improvements foresaid, being the cost price of the materials used (or, in the case of corn produced upon the holding, the current market price thereof, having regard to quality),

less any abatements which may be allowed, together with the cost of carriage to the nearest railway station, but without any allowance in respect of carting or labour in applying the manures to the lands, as in terms of the schedule hereto annexed shall still be unexhausted at the date of the termination of the tenancy; it being understood that in the case of feeding stuffs and grain, the manurial products of which are applied to arable land, the improvement shall only be held to have been made in the last year of the tenancy, when no crop has yet been raised upon such manure; and the compensation hereby provided is hereby declared to be substituted for the compensation provided by the said "Agricultural Holdings (Scotland) Acts, 1883 " to 1906," but that the same is nevertheless subject to the provisions of sub-section 3 of section 3 of the said Act of 1906: (*Fourth*) No compensation shall be payable to the tenant in respect of laying down temporary pasture in terms of Part Third of the said First Schedule to the said Act of 1900 on any land which, in accordance with the rules of good husbandry, or the rotation of cropping hereinbefore provided for, shall fall to be broken up before the term of the tenant's outgoing from the farm; but if the landlord shall consent to temporary pasture being laid down and left by the tenant at his outgoing in excess of the proportion of land in grass prescribed by the rotation of cropping hereinbefore provided, then the compensation payable to the tenant therefor shall, where the said pasture has been sown down more than two years before the determination of the tenancy, be one-half of the cost price of the seeds sown; and this compensation is hereby declared to be substituted for the compensation provided by the said Act of 1900.

[illegible]

#### 4. General Articles and Regulations of Lease.

On some estates it is the custom to have printed Articles and Conditions of Let containing all the *general* reservations, conditions, and stipulations, and to annex a print of these to a short written lease of each farm. The following is an example:—

*Articles and Regulations settled by A (designation) with reference to all Tacks or Leases of Farms on the Lands and Estates of X, in the County of Y, belonging to him.*

- |   |  |
|---|--|
| <p>Destination.</p> <p>Term of entry and duration.</p> <p>Moveable break.</p> | <p>1. THE lease shall in each case be to the tenant named and designed in the several Minutes of Lease to be executed with reference to these articles, and his heirs, but excluding heirs-portioners; the eldest heir-female succeeding without division. Assignees, legal or voluntary, trustees or managers for creditors, and sub-tenants, are excluded. The tenant may devise the lease by <i>mortis causa</i> deed to any one person, male or female, or to a trustee on behalf of a minor, such person or trustee being prepared to implement all the conditions of the lease binding on the original tenant, including, <i>inter alia</i>, the obligation of residence on the farm, and keeping the same fully stocked.</p> <p>2. Unless where otherwise stipulated in the said Minutes of Lease, the duration of the lease shall be the period of nineteen years, and the entry to the several farms and possessions upon the said estates shall be deemed to be at the term of Martinmas<sup>(a)</sup> (<i>i.e.</i>, the twenty-eighth day of November) of the year in which the lease commences, as to the arable lands, and at the term of Whitsunday (<i>i.e.</i>, the twenty-eighth day of May) following as to the houses and grass lands: BUT either landlord or tenant shall, subject to the provisions of the Agricultural Holdings (Scotland) Act, 1906, have the privilege or option of a break at any term of Martinmas (as to the arable lands) and Whitsunday following (as to the houses and grass lands) which shall occur during the currency of the lease—that is to say, shall have a right and power to declare the lease to be at an end, or to relinquish or renounce the same, at the said terms, provided the party desirous of exercising such privilege shall give three years'</p> |
|---|--|

<sup>(a)</sup> The form given here contemplates the entry to the arable lands being at Martinmas, and to the houses and lands in grass at Whitsunday *following*, which is the custom on some estates. Where, however, it is desired to make the entry to the houses and grass lands at the Whitsunday preceding, and to the arable lands at the separation of the crop of each field from the ground, which is perhaps the more usual practice, the necessary alterations will be made upon the articles or lease, as the case may be.

previous notice in writing to the other party of his (the former party's) intention to take advantage of the said break, and provided that, before the relinquishment or renunciation of the lease shall become effectual, all rents and arrears of rents due by the tenant shall be paid to the proprietor, and all the other obligations incumbent upon the tenant, whether during the tenancy, or on the tenant's outgoing, or otherwise, shall be fulfilled.

3. Unless where otherwise stipulated in the said Minutes of <sup>Payment of rent.</sup> Lease, the respective rents specified therein shall be payable at two terms in the year, Candlemas and Lammas, by equal portions, beginning the first term's payment at the first term of Lammas happening after the entry to the arable lands, for the half-year from the preceding term of Martinmas (being the term of entry to the arable lands as aforesaid) to the preceding term of Whitsunday (being the term of entry to the houses and grass lands as aforesaid), and the next term's payment at the term of Candlemas following for the half-year from the said term of Whitsunday to the term of Martinmas immediately succeeding, and so forth half-yearly, termly and proportionally thereafter at the said terms of Candlemas and Lammas during the currency of the lease, except in the case of the rent of the last year of the lease, the whole of which shall be payable before the removal of any part of the tenant's stock or crop from the ground; with a fifth part more of liquidate penalty in case of failure, and interest at the rate of five pounds per centum per annum on each termly payment from the date at which the same shall become due during the not-payment.(a)

4. The landlord reserves all mines, metals, minerals, coal, quarries <sup>Reservations.</sup> of stone and lime, gravel, clay, marl, and all fossils of every kind, <sup>Minerals.</sup> within the said lands, with full power to search for, work, win, calcine, manufacture, and carry away the same at pleasure; and for these purposes to sink bores and pits, make ponds, aqueducts, roads and railroads, and erect and construct buildings and other works, all as he may think proper; and the tenant shall have no claim against the landlord for loss or damage sustained in consequence of or by mining operations on the lands let to him, but shall have his recourse against the tenants of the minerals for compensation for the loss and damage thereby occasioned, or by

(a) If it is not desired to grant any postponement in the payment of rents, the first half-year's rent will be made payable at Whitsunday instead of Lammas, and the second at Martinmas instead of Candlemas following.

the erection of colliers' houses or otherwise, as the same shall be ascertained by arbitration between them, or in such other mode as they may mutually agree upon, with which the landlord shall have no concern.

Timber.

5. The landlord also reserves all plantations which now are or have been upon the lands, and all trees and wood of every description growing thereon, and the ground occupied thereby, with liberty to plant trees in rows along the fences and roads; also to cut and carry off timber, and to use all roads, paths, water-lades, and courses, and to alter and improve the same; but if in the exercise of the rights reserved by this clause any loss or damage is suffered by the tenant, he shall receive compensation in the shape of a deduction from the rent to such amount as shall, failing agreement, be settled by arbitration; and if any trees, wood, or plantation shall be destroyed or injured by the tenant, or by any of his servants, or by his live stock, the tenant shall be liable to the landlord for the damage so done, as the same, failing agreement, shall be settled by arbitration, as aforesaid.

Excambion,  
roads,  
marches,  
&c.

6. The landlord further reserves right to excamb ground, to straighten and regulate marches, and to make and shut up roads, as also to take land for planting, feuing, building, or other purposes, but not exceeding for all these purposes one-tenth part (*or other proportion to be agreed on in each case*) of the lands let, and for any addition to or diminution of the farm a corresponding increase or reduction of rent shall be payable to, or allowed by, the landlord during the remaining years of the lease, as the same shall, failing agreement, be fixed by arbitration.

Game  
clause.

7. The landlord reserves (in so far as not inconsistent with the Ground Game Act, 1880) the whole game on the lands hereby let, and the fish in the streams thereon, with full power and liberty by himself, or by others having his authority, to hunt, course, shoot, and fish on the lands hereby let; and to exclude all others from doing so; and to pass and repass thereon for sport or pleasure; and if any servants or others in the tenant's employment shall be charged with poaching, or any other offence under the game laws, and the charge proved to the landlord's satisfaction, the tenant shall not keep such servants or others in his employment beyond the first term of Whitsunday or Martinmas after he shall have received notice to that effect from the landlord.(a)

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(a) With reference to this clause, see provisions of section 2 of the Agricultural Holdings (Scotland) Act, 1906, and form of clause relative thereto suggested on pp. 416, 417 hereof.

8. The tenant shall be bound to reside on the farm, but, subject <sup>Residence.</sup> to this obligation, he may sub-let the farmhouse, furnished, for a period of not more than three months in any one year; and in order to prevent the introduction of people into the parish who may become a burden on the poor's funds, the tenant shall not bring, or assist in bringing, into the parish, any person or persons whatever (proper farm servants always excepted) by letting to them, or allowing them to possess, any of the cot-houses upon the foresaid lands, without the special written consent of the landlord or his factor on the said estates; and should any person or persons be introduced without such consent, and afterwards become chargeable on the parish, the tenant shall allow a house, rent free, to such person or persons from the time of their admission to the poor's funds, and thereafter during the subsistence of the lease.

9. The tenant shall cultivate the lands according to the most <sup>Cropping clause.</sup> approved mode of husbandry, and on the rotation to be specified in the said Minutes of Lease, and in particular he shall never take two successive grain or white crops from any part of the lands let (beans and peas being held to be the same as a white or grain crop unless properly drilled, manured and cleaned) except with the written consent of the landlord or his factor.

10. The tenant shall pay an additional rent of £5 sterling per <sup>Miscrop- ping.</sup> acre for all land miscropped, such additional rent being pactional and not penal. But this additional rent for miscropping shall be exigible by the landlord, subject to the provisions of section 6 of the Agricultural Holdings (Scotland) Act, 1900, only when notified to the tenant before or at the time of payment of the half-year's rent first due after the crop has been taken from the ground miscropped.

11. The tenant shall repay to the landlord or outgoing tenant the <sup>Grass seeds.</sup> price of the grass and clover seeds sown with the crop preceding his entry, unless he has himself sown the same; and right is reserved to the landlord or next incoming tenant to sow grass and clover seeds with the outgoing tenant's last or waygoing crop, and the outgoing tenant shall harrow and roll in the same without payment, and, further, shall give two days' notice when the land is ready for the grass seeds; and the young grass shall not be pastured or hurt in any way by the outgoing tenant after the last crop has been removed, but shall be properly hained.

12. The tenant shall give sufficient accommodation to the land-

- Accommodation to incoming tenant. lord or incoming tenant for their servants and horses employed in ploughing and sowing the crop during the period between the separation of the outgoing tenant's last crop from the ground and Whitsunday following.
- Purchase of dung, &c. 13. The tenant shall take over the old straw and dung made after turnip seedtime of the last green crop belonging to the outgoing tenant, at valuation by arbitration at the usual times.
- Prohibition as to selling turnips, straw, &c. 14. The tenant shall not be at liberty, except with the written consent of the landlord or his factor, to sell or carry off the farm any straw, dung, or turnips produced thereon, but shall consume the whole on the farm, and shall use thereon the whole dung, compost, and manure of every kind made on the farm. The tenant is also prohibited from removing any turf therefrom.
- Disposal of dung, &c. 15. The tenant shall deliver the whole of his old straw and dung made after the last turnip seedtime to the landlord or incoming tenant at valuation by arbitration at the usual times, and shall also deliver over, free of charge, any dung made before the last turnip seedtime, and not applied to the land.
- Thrashing-mill. 16. The tenant shall take over the thrashing-mill on the farm at valuation, and shall give over the same in like manner to the landlord or incoming tenant at his removal.
- Sheepstock. 17. On hill-farms, where sheep stock is kept, the tenant shall take over the whole sheep stock usually kept and bred and then on the lands, at valuation, and shall give over the same in like manner to the landlord or succeeding tenant at his removal; and the tenant shall not change the breed of the sheep stock, nor increase the same during the last four years of the lease, without the consent of the landlord in writing.
- Heather. 18. On farms bearing heather the extent to be burned annually shall not exceed the extent to be specified in the said Minutes of Lease, and such extent shall be annually burned in separate strips or patches, and under the directions of the landlord or his factor for the time being.
- Draining and fencing. 19. Subject to any special arrangements which may be made at the commencement of the lease, the tenant shall accept all drains, fences, roads, burns, ditches, water-banks, sluices, mill-dams, and watering-places on the farm, in the condition in which they then are, as being in sufficient tenantable condition and repair; and in the event of the landlord making or renewing a march-fence with any

adjoining proprietor, or any fence for enclosing or subdividing lands, or any embankment necessary for the preservation of the lands, also any draining on the farm (power to do any of the above being hereby reserved by the landlord), the tenant obliges himself to pay to the landlord additional rent corresponding to interest at the rate of five per centum per annum on the money so expended by him, all according to a state thereof to be signed by the landlord or his factor, and that at the terms before stipulated, beginning the first payment at the first term of Lammas or Candlemas after completing the said fences, embankments, or drains for the period from the date of completion until said term, and half-yearly and termly thereafter during the subsistence of the lease.

20. The tenant shall be bound to maintain in good order and repair during the lease, all roads, fences, burns, ditches, drains, mill-dams, sluices, water-lades, trows, lead-pipes, stop-cocks, and watering-places, including any fences, roads, drains, and others, which may be erected, made, or constructed by the landlord during the lease as aforesaid; and should he any time during the lease, or at its close, allow any of the above-mentioned subjects to fall into a state of disrepair, it shall be competent for the landlord to cause the same to be repaired or redd out at the tenant's expense, after one month's previous notice in writing, the workmen's discharged accounts being a sufficient voucher therefor. But the tenant shall only be liable for one-half of the cost of keeping in repair any fences enclosing plantations, or march-fences with neighbouring farms or other proprietors. The tenant shall switch at his own cost the hedges on the farm annually between the 1st day of October and 1st day of February following, and collect and burn the switchings, and failing his doing so within the time hereby appointed, the landlord shall be entitled to have the work performed without further notice to the tenant, and to charge him with the cost thereof.

Mainten-  
ance of  
roads,  
fences,  
drains, &c.

21. Subject to any special arrangements which may be made at the commencement of the lease, the tenant shall accept all houses and offices on the farm, in the condition in which they then are, as being in sufficient tenantable and habitable condition and repair, and as containing the requisite accommodation for working the farm, and he shall be bound to keep the whole, and such other houses or buildings as may be erected during the lease, in thorough repair during the currency of the lease, and leave them in that condition

Mainten-  
ance of  
buildings.

at the expiry of the lease, or on removal from the farm; and, without prejudice to the generality of the obligations before written as to keeping and maintaining the said houses, buildings, and others in repair as aforesaid, the tenant shall be bound, at least once every year, in spring or autumn, to cause a respectable slater to overhaul the whole roofs, replace the broken or cracked slates or tiles, and put them in good order: FURTHER, the landlord reserves power to paint, once in every four years, with one coat of good oil paint, the whole outside woodwork of all the buildings on the farm, one-half of the cost of which the tenant shall pay on production of an account thereof under the hand of the landlord or his factor for the time. And in case the tenant shall neglect or refuse to execute the necessary repairs on the said houses and buildings as before provided for, the landlord shall be at liberty to employ proper persons to do so, and in that case the tenant shall be bound to repay the sums so expended, the amount and particulars of which shall be sufficiently ascertained by an account or writing under the hand of the landlord or his factor for the time without the necessity of any other voucher.

Stocking.

22. The tenant shall at all times during the subsistence of his lease keep the farm fully stocked with a sufficient stock, his own *bona fide* property.

Insurance of  
buildings,  
crop and  
stocking.

23. The buildings on the lands let shall be insured by and in name of the landlord to the extent to be specified in the said respective Minutes of Lease, and the tenant shall pay, along with the first half-yearly payment of rent, one-half of the yearly premium therefor; and, in the event of the buildings being injured or destroyed by fire, the landlord shall not be bound to expend in the re-erection or repair thereof any larger sum than may be recovered from the insurance company, unless the tenant shall agree to pay interest at the rate of five per cent. upon any additional capital advanced by the landlord for this purpose, and further, the tenant shall perform all necessary carriages for such additional buildings at his own expense, and shall have no claims against the landlord for loss of accommodation or in any other way. The crop and stocking on the farm shall also be insured by and in the name of the landlord to the extent to be specified in the said Minutes of Lease, and the tenant shall pay the annual premium therefor along with the first half-yearly payment of his rent; and in the event of any loss occurring by fire the compensation received shall, in the first place, be applied in payment of any rent due by

the tenant, or in the fulfilment of any other obligations undertaken by him under the lease, the landlord being bound to account to the tenant for any balance which may thereafter remain in his hands.

24. The provisions of the Agricultural Holdings (Scotland) Act, 1883, as amended by the Agricultural Holdings (Scotland) Act, 1900, and the Agricultural Holdings (Scotland) Act, 1906, shall be excluded from the lease, except such provisions as are by these Acts, or any of them, made obligatory upon the landlord and tenant respectively, and such as relate to compensation to the tenant for unexhausted improvements, and the following stipulations shall be held as coming in lieu and place of the provisions of the said Acts with reference thereto: Agricultural Holdings Acts, 1883 to 1906. Compensation for unexhausted improvements.

THAT IS TO SAY—*(First)* Notices requiring to be given to the landlord in terms of the 4th section of the said Act of 1883 are dispensed with, and shall be of no force and effect during the currency of the lease, and in lieu of the provisions of that Act as to drainage, it is hereby stipulated that no drainage shall be undertaken by the tenant without the previous consent in writing of the landlord or his factor for the time being, but if such consent be given the landlord shall supply tiles free of charge, laid down at the nearest railway station to the farm, and the tenant shall perform the carriages and cut and lay the drains at his own expense, and without compensation being claimable therefor at the termination of the lease. *(Second)* Compensation shall be payable to the tenant at the termination of this lease in respect of any improvements effected by him of the nature specified in part third of the first schedule to the said Act of 1900, as amended by the said Act of 1906, but that subject always to the provisions of the said Acts, and also to the special provisions hereinafter made, and any sum due to the tenant in respect of such improvements, shall be liable to the reductions and deductions specified in the said Acts, or either of them. *(Third)* With reference to any claims such as aforesaid, the following special provisions shall take effect, viz.—

(a) No compensation shall be claimed by or allowed to the tenant in respect to guano applied to hay or white crops; (b) in the case of corn produced and consumed upon the holding, and in respect of which any claim for compensation is to be made at the termination of the tenancy, the tenant shall keep a book showing a regular account of the weight, quality, and consumption of the same upon the farm; (c) subject to the foregoing conditions the tenant, on quitting the

farm at the termination of his tenancy (whenever that shall occur), shall receive such proportion of his outlay in respect of the improvements foreshaid being the cost price of the materials used, or in the case of corn produced upon the holding, the current market price thereof having regard to quality, less any abatements which may be allowed, together with the cost of carriage to the nearest railway station, but without any allowance in respect of carting or labour in applying the manures to the lands as in terms of Schedule A hereto affixed shall be unexhausted at the date of the termination of the tenancy, it being understood that in the case of feeding stuffs and grain, the manurial products of which are applied to arable lands, the improvement shall only be held to have been made in the last year of the tenancy when no crop has yet been raised upon such manure, and the compensation hereby provided is declared to be substituted for the compensation provided by the said Agricultural Holdings (Scotland) Acts, 1883 and 1900, as amended by the said Act of 1906; and (d) the compensation payable to the tenant for laying down temporary pasture in terms of the said part third of the first schedule to the said Act of 1900, with seeds sown more than two years before the termination of the tenancy, shall be one-half of the cost price of the seeds sown; provided always that no compensation shall be paid in respect of pasture which, in accordance with the rules of good husbandry or the custom of the district, shall fall to be broken up before the landlord or incoming tenant shall have enjoyed a summer's crop of the same, and this compensation is hereby declared to be substituted for the compensation provided for by the said Act of 1900.

Compensation for carriages.

25. In the event of the tenant ceasing to occupy the farm before the natural termination of the lease, he shall have right to compensation from the landlord for the value of any carriages of materials for the permanent improvement of the farm performed by the tenant under the provisions of the lease, or with the written consent of the landlord. The amount of the compensation shall be in proportion to the number of years of the lease unexpired at the date of the tenant's removal from the farm; that is to say, the total estimated value of the carriages shall be divided into as many equal portions as there are years of the lease to run from the date of their performance—and if the tenant cease to occupy the farm before the natural expiry of the lease he shall receive the then value of one of

these portions for each year of the lease which he fails to enjoy; but under no circumstances shall the amount for value of carriages, at the time of the performance thereof, be estimated at more than fourteen per cent. on the amount paid by the landlord for these permanent improvements at the time of their execution.

26. If the tenant shall, at his own cost, desire to erect, and shall erect, any buildings or fences, with the consent in writing of the landlord or his factor, the plans and specifications thereof shall in the first place be approved of by the landlord, and the landlord shall be bound to take over such erections as he shall have consented to as aforesaid at a valuation, at the natural expiry or earlier termination of the lease. And, in the event of the tenant making any erections without such consent, the landlord shall be entitled to take such erections at valuation by an arbiter mutually chosen, or to decline taking them, and, in the latter case, the tenant shall be entitled to make them over to the incoming tenant, or to remove them, on condition that he restores the ground or the other buildings to which they are attached, to their original condition.

Compensation for tenant's erections.

27. The amount of all compensation payable under these articles and regulations shall be due to the person then in right of the lease, whether the original tenant or otherwise.

Compensation, to whom payable.

28. The tenant shall be bound to pay, if required by the landlord, each half-year's rent six months earlier than is above mentioned; that is to say, the half-year's rent payable as above at Lammas shall be paid at Candlemas preceding, and the half-year's rent payable at Candlemas shall be paid at Lammas preceding, the landlord being bound to give to the tenant six months' notice previous to the demand for such prepayment; or, in the tenant's option, he may offer to give security to the landlord's satisfaction for the due payment of the rent in the lease; and in case the tenant shall find it inconvenient, or be unwilling to comply with either of these conditions, he shall be at liberty to give up the farm, but without prejudice to any rights which he may have to compensation or otherwise under the terms and provisions of these articles and of the said Agricultural Holdings Acts, 1883 to 1906.

Earlier payment of rent.

29. And in case the tenant or his foresaids shall at any time during the lease become bankrupt in terms of law, or shall voluntarily divest themselves of their estate or effects, or execute a trust-deed for behoof of creditors, then, and in any of these events, the said lease shall

Bankruptcy of tenant.

*ipso facto* and notwithstanding anything contained in the said Agricultural Holdings (Scotland) Act, 1906, become void and null, and all right, interest, possession, or management of or in the said lands, competent to the tenant under the same, shall cease and determine, and the same is hereby declared to be forfeited to the landlord accordingly, but without prejudice to any rights which the tenant may have to compensation or otherwise under the terms and provisions of these articles.

**Arbitration.** 30. In every case requiring a settlement by arbitration under the lease the matter in question shall be referred to a single arbiter to be mutually chosen by the parties, but failing their being able to agree upon the choice of an arbiter within fourteen days from the date of the offer of either party to refer the matter in dispute to arbitration, it shall be competent for either party (at the joint expense of both parties) to apply to the Board of Agriculture to nominate a single arbiter (or arbiters to act in succession) as aforesaid. And for effectually carrying out any settlement by arbitration, the parties shall execute a formal submission, and shall mutually pay the cost thereof, as well as reasonable fees to the arbiter.

**Removal.** 31. At the expiry of the lease the tenant shall be bound to remove, without any warning or process of law, and if he fail to do so, and continue to possess by tacit relocation, or in any other manner, without a new agreement reduced into writing, he shall thereafter, so long as he continue to possess, pay double the yearly rent stipulated in the lease for the said lands, at the usual terms, besides performing the whole other conditions before stipulated.

Articles and regulations to have same effect as if engrossed in leases.

32. All the articles and regulations before written are hereby declared to have the same effect as if they had been verbatim engrossed in the said Minutes of Lease, which Minutes of Lease may be duly executed by any factors and commissioners or factor and commissioner for the time being of the said A, for and on behalf of the landlord; and the said A, and the whole tenants whose Minutes of Lease shall be executed with reference hereto, consent to the registration hereof, and of the said Minutes of Lease, in the Books of Council and Session, or others competent for preservation and execution.—IN WITNESS WHEREOF, &c.

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SCHEDULE A.

(1.) Lime applied to arable land or to permanent pasture shall be held to last for eleven years, and allowance will be made according to such proportion of the original value or cost, as remains unexhausted, the same being estimated according to the undernoted scale of exhaustion in each year.

In the 1st year, $\frac{11}{88}$	In the 5th year, $\frac{7}{88}$	In the 9th year, $\frac{3}{88}$
" 2nd " $\frac{10}{88}$	" 6th " $\frac{6}{88}$	" 10th " $\frac{2}{88}$
" 3rd " $\frac{9}{88}$	" 7th " $\frac{5}{88}$	" 11th " $\frac{1}{88}$
" 4th " $\frac{8}{88}$	" 8th " $\frac{4}{88}$	

(2.) Horse, cow and town manure, guano and bones shall be held to last for four years, and allowance will be made according to such proportion of the original cost as remains unexhausted, the same being estimated according to the undernoted scale of exhaustion in each year.

In the 1st year, . . $\frac{4}{10}$	In the 3rd year, . . $\frac{2}{10}$
" 2nd " . . $\frac{3}{10}$	" 4th " . . $\frac{1}{10}$

(3.) Nitrate of soda and sulphate of ammonia are considered to be exhausted by the crop to which they are applied, and, consequently, no compensation will be allowed for them when the tenant receives the worth of his crop, either by public or private sale. In like manner compensation will not, except under special agreement, be computed or allowed for in respect of the first year's value of the other manures above specified. These rates of compensation for unexhausted manures shall not include the cost of the carriages and laying on performed by the tenant, for which no allowance will be made, but the same will be estimated at the price per ton laid down at the nearest railway station to the farm.

5. Minute of Lease.

*Minute of Lease between A (designation), Proprietor of the Lands and Others hereinafter Let (hereinafter referred to as the Landlord), on the one part ; and B (designation) (hereinafter referred to as the Tenant), on the other part.*

(First) The said A hereby lets to the said B and his heirs in terms of the Articles and Regulations of Lease after mentioned, ALL AND WHOLE the farm and lands of Q (*here describe the lands, &c.*), on the estate of X, lying in the parish of and County of Y, and

that for the space of nineteen years from and after the term of Martinmas 19 , as to the arable lands, and the term of Whitsunday 19 , as to the houses, steading and lands in grass, but subject always to the provisions of the said Articles and Regulations in regard to breaks: DECLARING that the said farm and lands are hereby let with and under the whole reservations, conditions and provisions, whether in favour of landlord or tenant or other parties interested, specified, and contained in the Articles and Regulations settled by the said A, with reference to all tacks or leases of farms on the lands and estate of X, in the County of Y, belonging to him, dated the , and recorded in the Books of Council and Session , a printed copy of which Articles and Regulations is annexed and subscribed by the parties as relative hereto.

(*Second*) For which causes, and on the other part, the said B binds and obliges himself, and his heirs, executors, and representatives whomsoever, all conjunctly and severally to pay to the said A, or to his factor or agent for the time, the sum of £ sterling of yearly rent for the said farm and lands hereby let, and that at the terms and in the manner mentioned in the said Articles and Regulations.

(*Third*) The tenant shall crop the lands in the manner specified in clause 9 of the said Articles and Regulations, and in particular shall observe the following rotation, viz. :—The arable lands shall be divided as nearly as may be into six equal divisions, of which there shall be in each year one division in green crop which shall be carefully and thoroughly laboured and sufficiently cleaned and manured, not more than one-third of this division being in potatoes in any one year; another division shall be in oats or barley after green crop, sown down with a sufficient quantity of perennial ryegrass seeds and red and white clover; another division shall be in hay or pasture; another division in pasture after hay; another division in two-year-old pasture; and the remaining division in oats after two-year-old pasture.

(*Fourth*) The farm buildings shall be insured against loss by fire in terms of the said Articles and Regulations to the extent of £ sterling, and the farm stock and crop also in terms thereof to the extent of £ sterling.

(*Fifth*) If it be desired to introduce an arrangement as to damage by game in terms of the Act of 1906 insert here a clause in similar terms to that given at p. 417.

(*Lastly*) The said A binds and obliges himself to implement and perform the whole conditions, provisions, and stipulations incumbent upon the landlord under the said Articles and Regulations and these presents: AND the said B binds and obliges himself and his foresaids to observe, implement and perform the whole conditions, provisions and stipulations thereby imposed upon tenants, and that under a penalty of £                      to be paid by the party failing to the party observing or willing to observe the same over and above performance: AND both parties consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF.

### 6. Lease of a Pastoral Farm.

IT is CONTRACTED, AGREED, and ENDED between A (*designation*), <sup>Landlord and tenant.</sup> heritable proprietor of the lands and others after mentioned (he and his heirs and successors being hereinafter referred to, when not named, as the proprietor), *on the one part*, and B (*designation*) (he and his heirs and successors being hereinafter referred to, when not named, as the tenant) *on the other part*, in manner following: THAT IS TO SAY, the said A has set, and in consideration of the tack-duty and other prestations after specified hereby sets, and in tack and assedation lets to the said B and his heirs, but expressly excluding all assignees and sub-tenants, legal or voluntary, and all creditors or managers or trustees for behoof of creditors, declaring that in the event of the bankruptcy or insolvency of the tenant (whether by the operation of the bankruptcy laws, or by the execution of a voluntary trust-deed), these presents shall, in the option of the landlord, be and become *ipso facto* null and void, and that without any declarator or other action at law, and that the landlord shall be entitled in any of these events to resume possession of the said subjects, and to exclude all assignees, creditors or managers for creditors in the same way and to the same effect as if this lease had come to an end by the expiry of the full period thereof, and also excluding heirs-portioners (the eldest heir-female always succeeding without division), ALL AND WHOLE the <sup>Subjects let.</sup> farm and lands of X, all lying in the parish of Y and County of                     , but declaring that the extent and boundaries of the lands hereby let are not warranted by the proprietor, and that for <sup>Term of endurance.</sup> the space of                      years from and after the term of Whitsunday 19   : BUT PROVIDING and DECLARING ALWAYS that it shall be in the <sup>Break.</sup> power of either party to terminate this lease at the term of Whit-

Reservations.  
 Minerals.  
 Woods.

Right to  
 plant trees.

Resumption  
 of lands for  
 feuing.

Straighten-  
 ing of  
 marches.  
 Excambion.

Roads.  
 Game.

sunday 19 , on giving to the other party at least one year's previous intimation in writing of his intention so to do : RESERVING ALWAYS to the said A the whole mines, metals, coal, limestone, clay, marl, free-stone and other minerals, and also all plantations and woods, natural as well as planted, in and upon the said farm and lands hereby let, with the right to work, use, and possess the said minerals and others, and to sell or dispose of the same at pleasure, as also to build houses and all other conveniences on the said lands which shall be requisite for these purposes, and to cut and enclose any woods on the lands hereby let, and to keep the same in training until the stool and young growth are out of danger of being hurt by cattle : AND also to plant trees on any part of the lands hereby let, the said A and his foresaids paying to the said B and his foresaids whatever surface damages the said farm and lands hereby let shall thereby sustain as the same shall be ascertained by an arbiter to be mutually chosen, or in the event of the parties being unable to agree upon the choice of an arbiter, then by an arbiter to be appointed by the Board of Agriculture upon the application of either party, and the decision of such arbiter shall be final and binding upon the parties hereto ; and further reserving to the landlord power at any time during the currency of the lease to resume any part or parts of the said lands hereby let for the purpose of planting, feuing, or otherwise, the tenant being entitled to a yearly deduction from his rent for the lands so resumed at a rate to be agreed upon between the parties, or failing any such agreement, then at a rate to be fixed by arbitration as aforesaid ; with power also to the landlord to straighten and regulate marches with neighbouring proprietors or tenants, or to excamb any part of the said lands hereby let with any neighbouring proprietor or tenant, the tenant paying such additional rent, or receiving such deduction from his rent, for any addition to or diminution of his lands, or damages caused by such straightening or regulation of marches or excambing, as shall be agreed upon between the parties, or, failing agreement, as shall be fixed by arbitration as aforesaid ; as also to make, alter, and use or shut up and disuse any roads or footpaths on the said lands : AND FURTHER, reserving to the landlord the exclusive right to the whole game, fishing, and shooting on the said lands, and also the right to hares and rabbits, subject to the provisions of the Ground Game Act, 1880, with the privilege to the landlord and his foresaids, and to such persons as may be authorised by him or them to enter upon the said lands for the

exercise or enjoyment of such reserved rights; declaring that the tenant shall, subject to the rights conferred upon him by the said Ground Game Act, be bound to assist in preserving the whole game upon the said lands: WHICH lease the said A binds and obliges himself and his foresaids to warrant to the said B and his foresaids at all hands: FOR which causes, and on the other part, the <sup>Rent.</sup> said B binds and obliges himself and his heirs, executors, and representatives whomsoever, all conjunctly and severally, to make payment to the said A and his foresaids, or to his or their factor or agent for the time being—*(First)* Of the sum of £                      sterling of yearly rent for the farm and lands hereby let; and *(Second)* Of interest at the rate of                      per cent. per annum upon the amount or sum which shall represent the difference to be paid by the said A, as after mentioned, between the valuation price of the sheep stock on the said farm and lands hereby let, as at the term of Whitsunday 19   , and the market price or value thereof as at the said term,—at which market price or value the said A has agreed to give over the said sheep stock to the said B as after provided, and that as regards both the said rent and interest at two terms in the year, Whitsunday <sup>Terms of payment.</sup> and Martinmas, by equal portions, beginning the first term's payment thereof at the term of Martinmas 19    for the half-year preceding that date, and the next term's payment at the term of Whitsunday 19   , and so forth half-yearly and termly thereafter during the currency of this lease, with a fifth part more of each term's rent and interest of liquidate penalty in case of failure in the punctual payment thereof, and the interest at the rate of five per cent. per annum from the said terms of payment until paid: AND FURTHER, <sup>Taxes.</sup> the said B binds and obliges himself and his foresaids to pay the tenant's proportion of all taxes and public burdens exigible from tenants affecting the said farm and lands during the currency of this lease: AND FURTHER, to grind his corn at the mill of                     , <sup>Thirlage.</sup> and to pay the usual thirlage and perform the accustomed services in repairing the mill-dam; and in respect the landlord has agreed to expend the sum of £                      sterling in *(specify repairs)*, the tenant, upon these repairs being duly executed, hereby accepts of the whole <sup>Repairs.</sup> houses and offices, gates, fences, ditches, hedges and tile-drains on the said farm and lands as in good habitable and tenantable condition and repair as at the term of his entry thereto; and binds and obliges himself and his foresaids to keep and maintain the same in the like good condition and repair, and leave them in that state at the expiry,

or sooner termination, of this lease, fair tear and wear alone excepted; and with regard to the hill-drains, the tenant shall keep and leave them in as good and tenantable condition and state as that in which he received them at the commencement of this lease; and in particular, and without prejudice to the said generality of the said obligations as to buildings, the tenant shall be bound to whitewash all harled buildings once in every two years, to overhaul the roofs of all buildings annually, and to paint the outside woodwork with at least two coats of good oil paint once in every four years; and failing his delivering over the said houses and offices, gates, dykes, ditches, hedges and fences in the condition and repair above stipulated at the time of his removal from the said farm and lands, the tenant binds and obliges himself and his foresaids to pay to the landlord whatever sum may be sufficient to put them into that state, as the same shall, failing agreement between the parties, be fixed by arbitration as aforesaid; and with regard to all cartages of materials required for the said improvements and repairs to be executed by the landlord as aforesaid, the tenant shall perform the same, or arrange for the performance thereof, free of charge: AND it is hereby further agreed between the parties hereto that the landlord shall insure the dwelling-house and offices against loss by fire in his own name to the amount of £ , or such larger sum as he may think proper, and shall keep up and renew the policy during the lease; and the said B binds and obliges himself and his foresaids to pay to the landlord one-half of the premium of insurance payable in respect thereof, along with the half-yearly rent payable at Martinmas yearly; and in case of loss or damage by fire, it is hereby declared that the tenant shall have no other claim against the landlord than that he shall, without undue delay, expend the sum which he may receive from the insurance company in repairing the damage done to the said dwelling-house and others, or rebuilding the same (*as the case may require*); and on this being done, the obligations of the landlord shall be held to have been fully implemented and discharged; and the obligations incumbent on the tenant under this lease shall not in any way be affected by such damage having occurred, or such rebuilding being necessary: AND FURTHER, the said B binds and obliges himself and his foresaids to keep the farm stock and crop insured against loss by fire in name of the landlord for the sum of not less than £ sterling during the whole currency hereof, and to exhibit to the landlord, or to

his factor or agent for the time being, receipts for the annual payments exigible thereon regularly within eight days after the same shall fall due in each year: AND the said B also binds and obliges himself and his foresaids to reside upon the said farm and lands hereby let, and to keep thereon a sufficient stock of every kind which shall be *bona fide* his own property: AND it is hereby further provided that the tenant shall not, directly or indirectly, sub-let the dwelling-house on the said farm, or allow any vicarious possession thereof to any person or persons, except such only as shall be approved of by the landlord in writing; declaring that in the event of any such sub-letting or vicarious possession, legal or voluntary, taking place without the express consent of the landlord as aforesaid, it shall be lawful for the said A and his foresaids either to resume possession of the whole subjects hereby let, or of such part thereof as has been possessed by others than the principal tenant under this lease, and that *brevi manu*, and without any declarator or other procedure at law, upon allowing to the tenant a deduction of rent for what is resumed in proportion to the total rent of the said lands hereby let, as such proportion shall be fixed and determined by the landlord, or his factor or agent for the time being: AND FURTHER, the tenant shall be bound to take care of all plantations and trees upon the said farm and lands, and in nowise to injure the same, or suffer any of them to be cut or dug up by others, or destroyed by cattle grazing on the said lands; and with regard to the cropping of the arable portion of the said farm and lands hereby let, it is hereby agreed that the tenant shall crop, cultivate, and manage the same according to the rules of good husbandry, as practised in the district, and particularly, and without prejudice to the said generality, that he shall at no time during the currency of this lease have more than three-fifths of the arable lands under crop in any one year, of which three-fifths not more than one-third shall be in green crop: AND FURTHER, that two white crops shall not be grown in succession upon any part of the said lands without an intervening green crop properly manured, dressed and cleaned; declaring that should the tenant elect to take two hay crops in succession from any portion of the arable lands then falling to be in grass, he binds and obliges himself in that event to thoroughly top dress the said lands with well-made farm-yard manure during the winter or spring preceding the cutting of the second crop of hay, and in no case shall the tenant take more than two hay crops in succession from off any part of the said arable lands,

Residence  
and stock-  
ing.

Sub-letting.

Trees, &c.

Cropping.

Penalty  
for mis-  
cropping.

Waygoing  
crop.

unless with the written permission of the landlord: AND it is hereby specially stipulated and agreed that for every acre miscropped, or managed otherwise than in accordance with the stipulations of this lease, or allowed by the tenant to become fouled or deteriorated the said B and his foresaids shall (subject to the provisions of the Agricultural Holdings Act, 1906), pay to the landlord such additional sum per acre in name of damages for the lands so miscropped, fouled, or deteriorated as, failing agreement between the parties, shall be fixed by arbitration as aforesaid, and that over and above the yearly rent stipulated under this lease; but always without prejudice to the right of the landlord to put a stop to such irregular cropping and mismanagement, which additional rent shall not be considered as penal, but as the express agreement of the parties: AND FURTHER, the said A binds and obliges himself and his foresaids at the expiry, or sooner termination of this lease, to take the incoming tenant bound to take over from the said B and his foresaids the waygoing crop then on the farm, together with the straw grown thereon, and the dung made after the turnip seedtime of the last year of this lease (whenever that may be), at a price to be fixed by arbitration as aforesaid (which crop shall be taken as a growing crop, and be valued over within ten days of harvesting); and failing the said incoming tenant so taking over the said crop, straw, and dung, then to take over the same himself at such valuation, the price so fixed by arbitration to be in either event paid at the time fixed by custom in such cases in the district; and declaring that in the last year of this lease the tenant shall be bound to apply the whole dung made before turnip seedtime to the grain crop of that year, and that any dung so made and not so applied to the land shall become the property of the landlord without any payment being made therefor: AND DECLARING FURTHER that in the last year of this lease the landlord or incoming tenant shall be entitled to sow at the proper time any part of the land then in white crop with grass seeds with the tenant's waygoing crop, which grass seeds the said B and his foresaids shall be bound to harrow and roll in free of charge; and the said B and his foresaids shall further be bound to hain and preserve the young grass after the reaping of the said white crop, and shall not be entitled to cut or pasture the same: AND in respect of the landlord's obligation above written as to the tenant's waygoing crop, the said B binds and obliges himself at his entry to the said farm and lands similarly

to take over from the outgoing tenant thereof, the whole crop, straw, and dung then on the farm, and that at a price or value to be fixed by arbitration as aforesaid: AND with regard to the sheep stock on the said farm and lands, the following stipulations and agreements shall take effect: THAT IS TO SAY—(*First*) The landlord shall, as at the said term of Whitsunday 19 , take over from the outgoing tenant of the said farm and lands, in terms of the subsisting lease thereof, the sheep stock then upon or properly belonging to the said farm and lands hereby let, and shall pay for the same such price as shall, failing agreement, be fixed by arbitration as aforesaid; (*Second*) Immediately after the said valuation shall have been made, or at one and the same time therewith, the landlord shall deliver over to the tenant under these presents the said sheep stock so far as then upon or belonging to the said farm and lands hereby let, who shall thereupon be bound to take and pay for the same to the landlord the market price or value thereof, as distinguished from the valuation price thereof payable in terms of said presently subsisting lease, or of the custom of the district: DECLARING ALWAYS, as it is hereby expressly provided and declared to be a condition of this lease, that the term "market price or value" shall mean the actual price or value which the various classes of stock carried by the said farm and lands hereby let would bring or might reasonably be expected to bring in their several classes if passed through a public sale-ring at the time of valuation: AND FURTHER, that no additional sum or value shall be added to such market price or value for or in respect of acclimatisation, or of the said sheep stock or any part thereof being hefted to the ground, or on any other account whatever, and that such market price or value shall be fixed by a sole arbiter, who shall be a sheep salesman or a cattle salesman, to be agreed upon by the landlord and tenant, and to be mutually chosen by them, or failing agreement between the parties, as shall be appointed by the Board of Agriculture; and (*Third*) That the tenant under these presents or his foresaids shall at the expiry or sooner termination of this lease be bound to deliver, and the landlord or incoming tenant shall be bound to take over, the sheep stock then upon and properly belonging to the said farm and lands hereby let at the then market price or value thereof, as the same shall be ascertained, fixed, and determined in the manner and in accordance with the conditions foresaid, and the proprietor

hereby binds himself and his foresaids, if required to do so by the tenant, to take the incoming tenant bound to grant security for the due and punctual payment for the said sheep stock before delivery thereof to such incoming tenant: PROVIDING AND DECLARING ALWAYS that at the expiry or sooner termination of this lease, the number of sheep on the farm shall not exceed the average stock kept thereon during the preceding years of this lease; and it is hereby further specially provided and declared that the tenant under these presents shall be bound to pay the said market price or value to be fixed and determined as aforesaid as at the said term of Whitsunday next to the landlord within eight days from the date of the said valuation, with interest at the rate of six per cent. per annum from the date of payment hereby fixed until paid (a): AND it is hereby provided and declared that the tenant shall not in any year during the currency of this lease gather lambs on the lands hereby let, from the 12th to the 19th days of August, both inclusive: AND it is hereby further provided and declared that if one whole year's rent, or tack-duty exigible under this lease, shall at any time during the currency hereof remain unpaid, then this lease shall, in the option of the said A and his foresaids, and notwithstanding anything contained in the said Agricultural Holdings (Scotland) Act, 1906, be and become void and null without the necessity of any procedure of law or declarator to that effect, and it shall not be lawful to the said B or his foresaids to purge this irritancy at the bar: AND the said B further binds and obliges himself and his foresaids not to cut peats, turfs, scraws, or feal in any hag or meadow ground, or in any ground capable of improvement or otherwise, than at such place or places as shall be approved of by the landlord or his factor or agent for the time: AND FURTHER, the tenant shall be bound to use his utmost efforts to keep down brackens on the hill portions of the lands hereby let, and that in such manner that they shall not unduly increase during the currency of this lease: AND with reference to muir-burning the tenant binds and obliges himself in no case to burn more in any one year than one-tenth part of the hill portion of the lands, and which burning shall be carried out at the sight and to the satisfaction of the proprietor's gamekeeper or of any other person he may appoint to superintend the work: AND at the expiry or sooner termination of this lease the said B binds and obliges him-

Irritancy.

Cutting of  
peats, &c.Muir-  
burning.

Removal.

(a) *Duke of Argyll v. M<sup>r</sup>Arthur's Trustees*, 17 R. 135; *Buchanan v. Riddell*, 2 F. 544; *Marquis of Breadalbane v. Stewart*, 6 F. (H. L.) 23.

self and his foresaids to flit and remove themselves, their families, servants, cottars, goods, and gear furth of and from the said farm and lands hereby let, and to leave the same void and redd, to the effect that the landlord or others in his name may enter thereto immediately and may peaceably possess the same in all time thereafter, and that without any previous warning or process of removing being used against him or them to that effect, and failing their doing so they shall thereby become bound to pay to the said A or his foresaids rent at the rate of £                      sterling for every day they shall possess the lands and others hereby let from and after the expiry or sooner termination of this tack: AND FURTHER, to observe and fulfil for the time he or they shall remain after the expiry or sooner termination of this lease all the other engagements hereby undertaken; And for the more sure payment of the sums of money and performance of the stipulations before specified it is hereby specially provided and declared that no suspension of a charge for payment or performance thereof shall pass at the instance of the said B or his foresaids, but upon consignment of the sums contained in the said charge: AND LASTLY, Both parties bind and oblige themselves and their foresaids to implement and perform their respective parts of the premises to each other under the penalty of £                      sterling, to be paid by the party Penalty. failing to the party observing or willing to observe the same over and above performance: AND both parties consent to the registration hereof for preservation and execution.—IN WITNESS Testing clause. WHEREOF, &c.

### 7. Lease of a Market Garden.(a)

*Minute of Lease between A (designation), Heritable Proprietor of the Subjects hereinafter let (he and his Heirs and Successors in the said Subjects being hereinafter referred to, when not named, as the "First Party"), on the one part; and B (designation) (he and his Heirs and Successors being hereinafter referred to, when not named, as the "Second Party"), on the other part.*

(First) The First Party hereby lets to the Second Party and his

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(a) In framing a lease of this nature reference should be had to the Agricultural Holdings Acts, 1883 to 1906, and in particular to the Market Gardeners Compensation (Scotland) Act, 1897, and the clauses as to compensation and otherwise adjusted to suit the circumstances of the particular holding in accordance with the agreement of parties.

heirs, but excluding heirs-portioners, the eldest heir-female always succeeding without division, and also excluding all assignees, whether legal or conventional trustees and managers for creditors, and sub-tenants in any manner of way, ALL AND WHOLE (*here describe the subjects let*), with the whole fruit trees and bushes thereon so far as belonging to the First Party, and together with the relative offices, as the said subjects were recently possessed by C, all lying in the parish of                      and County of                      ; and which lands and others hereby let extend to                      acres or thereby imperial measure (but which measurement is not guaranteed by the First Party); and that for the space of                      years from and after the term of                      19 : RESERVING to the First Party the whole mines, metals, minerals, and mineral substances in or under any part of the subjects hereby let, with full power to search for, work, win, and carry away the same at pleasure, and also the whole game, hares, and rabbits on the said subjects, with right to enter thereon for the purpose of shooting and killing the same, but that subject always to the provisions of the Ground Game Act, 1880.

**Rent.**                      (*Second*) The Second Party binds and obliges himself and his heirs, executors, and successors whomsoever, all conjunctly and severally, to pay to the First Party, or to his factor or agent for the time being, for the subjects hereby let, a rent of £                      sterling per annum, and that half-yearly at Whitsunday and Martinmas by equal portions, commencing the first payment at                      and the next payment thereof at                      following, and that in full of the rent for the year to                      , and so forth half-yearly and termly thereafter during the currency of this lease, with a fifth part more of each half-yearly payment of liquidate penalty in case of failure, and interest at the rate of 5 per cent. per annum from the time each half-yearly payment becomes due until paid.

**Obligations as to buildings, &c.**                      (*Third*) The Second Party hereby accepts of the whole buildings and fences upon the lands hereby let as in good tenantable order and repair, and binds and obliges himself and his foresaids to keep the same in the like good order and repair, and to leave them so at the expiry of this lease, and also regularly to switch and clean the hedges where these form the boundary fences of the subjects hereby let.

(*Fourth*) The Second Party binds and obliges himself and his fore-

said to repay to the First Party one-half of the premium on a policy of insurance against fire to be effected by the First Party in his own name over the buildings and glass-houses on the subjects hereby let to the extent of £                      sterling, or such other sum as the First Party may from time to time consider necessary, and that yearly at the term of                      , along with the rent then due, and with interest and penalty as hereinbefore provided with reference to the said rent.

(*Fifth*) The Second Party shall be bound to occupy the said subjects hereby let exclusively as a market garden, or partly as a market garden and partly as an orchard, and for no other purpose whatever unless with the express written consent of the First Party: AND he binds and obliges himself and his foresaids not to impoverish or exhaust the soil, but to cultivate the same according to the rules of good horticulture as recognised and practised in the district, and to keep the land reasonably clean and free from weeds, and in particular to prevent such weeds from seeding: AND FURTHER, the Second Party binds himself and his foresaids to apply to the lands, either annually or otherwise, such a quantity of good dung as will prevent an impoverishing or exhausting of the soil: THE Second Party shall also be bound regularly to prune and trim the fruit trees and bushes presently growing or that may hereafter be planted on the subjects hereby let, and also to maintain and leave in good order and repair the roads and paths used in connection with the said subjects: AND FURTHER, to keep the ditches and drains clear and redd to the satisfaction of the First Party.

(*Sixth*) Whereas the glass-houses at present on the subjects hereby let are the property of the outgoing tenant, it is hereby agreed that, in the event of the First Party being required to pay to the outgoing tenant for any glass-houses or other erections connected therewith, the Second Party shall be bound and obliged to pay to the First Party and his foresaids interest at the rate of                      per cent. per annum on the sum so paid by him to the outgoing tenant, which interest shall be payable half-yearly at Whitsunday and Martinmas, beginning the first payment of the said interest at the term of                      , and with interest and penalty as is hereinbefore provided for with reference to the rent: AND it is hereby declared that any glass-houses or other erections left as aforesaid by the outgoing tenant shall be maintained by the Second

Party, and shall be left to the First Party or the next incoming tenant in as good order and repair as that in which the Second Party received them, without any claim for compensation therefor.

Future  
erections.

(*Seventh*) The Second Party hereby agrees not to erect any glass-houses or other erections on the subjects hereby let without having first obtained the written consent of the First Party thereto.

Trees, &c.

(*Eighth*) In respect that the trees and bushes growing on the portion of the lands hereby let belong to the First Party, the Second Party shall be bound at the expiry of this lease to leave the said portion of the lands hereby let similarly stocked with trees and bushes without being entitled to any compensation therefor.

Relief of  
First Party.

(*Ninth*) The Second Party binds and obliges himself to free and relieve the First Party of all claims at the instance of the present tenant for compensation for (1st) unexhausted manures, (2nd) fruit trees and bushes belonging to and left by him in the ground, (3rd) strawberries and other growing crops thereon, and (4th) division fences and shelter-hedges so far as belonging to him; and at the termination of this lease the Second Party or his foresaids shall be entitled to be similarly compensated by the proprietor or next incoming tenant, as such compensation shall be fixed by a single arbiter mutually chosen, or failing the parties being able to agree upon the selection of an arbiter, then by an arbiter to be appointed by the Board of Agriculture upon the application of either party.

Removal.

(*Tenth*) The Second Party shall remove from the whole premises hereby let at the expiry, or sooner termination, of this lease without any warning or other process of law to that effect.

Penalty.

(*Lastly*) Both parties bind themselves to perform their respective parts of the premises to each other under a penalty of £100 sterling, to be paid by the party failing to the party observing, or willing to observe, over and above performance: AND both parties consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

Where the ground leased has not been previously occupied as a market garden or orchard the proprietor may provide that the tenant should stock the ground as a market garden and orchard, the tenant receiving compensation therefor from the landlord or incoming tenant at his outgoing; or the tenant may be taken bound in the last year of the lease to remove all the trees, bushes, &c., planted by him, to restore the land to an arable state, and to level and plough the ground, and sow out the same with grass seed. Certain of the above clauses may require modification to suit the circumstances of each case.

## SECTION III.

## MINERAL LEASES.

## 1. Lease of Coal and Ironstone.

IT is CONTRACTED and AGREED between the parties following—viz., A (*designation*), heritable proprietor of the lands and minerals hereinafter mentioned (he and his heirs and successors in the said lands and others being, when not named, hereinafter referred to as the First Party), *on the one part*, and B (*designation*) (he and his heirs and successors being hereinafter referred to, when not named, as the Second Party), *on the other part*, in manner following: THAT IS TO SAY, the said A, IN CONSIDERATION OF the fixed rent and royalties, and other prestations after written, and under the conditions, provisions and declarations after specified, hereby LETS, to the said B and his heirs, but excluding assignees and sub-tenants, legal or conventional, and creditors, and trustees, liquidators, or managers for behoof of creditors, unless with the consent of the first party in writing: DECLARING that in the event of such consent being given to any sub-lease or sub-leases of the mineral field hereby let, the second party shall remain jointly and severally liable, along with such sub-tenant or sub-tenants, for the whole obligations and prestations imposed or incumbent on the tenant under this lease, ALL AND WHOLE the whole seams of coal, including parrot and gas Description. coal and all blackband ironstone, clayband ironstone, fireclay and common clay, limestone, and shale (subject to the exceptions and reservations aftermentioned), lying or to be found within those parts and portions of the lands of \_\_\_\_\_ lying in the parish of \_\_\_\_\_, and County of \_\_\_\_\_, delineated and coloured \_\_\_\_\_ on the plan, docqueted and signed as relative hereto, extending to \_\_\_\_\_ imperial measure or thereby, and bounded as follows—On the north by \_\_\_\_\_, on the east by \_\_\_\_\_, on the south by \_\_\_\_\_, and on the west by \_\_\_\_\_: BUT EXCEPTING ALWAYS from this Exception of stone, &c. lease all freestone or other stone suitable or used for building purposes which may be found in the said lands: AND ALSO excepting any minerals lying under and along the sides of all public roads now running through the said lands, in so far as the working of such minerals is contrary to law or beyond the power of the said A

or his foresaids to grant, the Second Party being entitled to work the same under and along such roads only in so far as the First Party may legally work or confer the right to work the same, and subject to the same conditions in all respects, provided that in the event of the Second Party working under or within five yards of any road or roads, he shall be bound securely to pack and under-build the ground in manner customary in longwall working, so as to prevent as far as possible any damage being done to the roads; but in the event of damage being done to any road, notwithstanding the use of such precautions, the Second Party shall be liable therefor, and shall be bound to relieve the First Party of and from all claims in connection therewith; and with regard to minerals lying under any public railway now running or that may hereafter be constructed through the said lands, the rights of the Second Party with reference to the working of such minerals shall be subject to the provisions thereanent contained in the Railway Clauses Consolidation (Scotland) Act, 1845, and any other Acts relating to railways in Scotland, but without prejudice to any claims which the Second Party may have against the railway company or railway companies forming, constructing or using such railway in connection with the working of the said minerals hereby let, or any part thereof: AND ALSO excepting from this lease the minerals under the dwelling-house and farm-steadings and other existing covered buildings on the lands, and for a distance of                      yards around the same, measuring from the outer wall of each house, or from the steading or other building connected therewith: AND THAT for the space of                      years from and after the term of Martinmas 19    : BUT DECLARING that the Second Party shall have the privilege of a break at the expiry of every period of                      years from and after the said term of Martinmas 19    —that is to say, a right to relinquish this lease at the expiry of each period, provided he shall give notice in writing to the First Party six months previous to the expiry of any such period that he intends to avail himself of the break, and provided that before the relinquishment of his tenancy under these presents all rents and royalties or arrears thereof shall be paid in full to the First Party, all damages incurred by the Second Party to any person or persons settled, and all obligations incumbent on him under this lease duly implemented: AND DECLARING that it shall not be competent to the Second Party during any of the said periods

Breaks in  
favour of  
lessee.

of years to urge on the First Party that the said minerals hereby let, or any of them, have become unworkable to profit, and on that or any other ground to seek to renounce the lease during the running of any of the said periods, it being hereby understood that, unless six months' notice of the Second Party's intention to avail himself of any of the said breaks shall have been given, this lease shall continue in full force until the next period of break, or at all events that the full fixed or minimum rent for the periods respectively hereinafter stipulated, shall continue to be paid half-yearly during the lease, or in the First Party's option the lordships or royalties after mentioned, unless the Second Party shall terminate the lease at one or other of the periods or breaks herein provided for, and in the manner herein stipulated, and on no other ground shall it be in the power of the Second Party to terminate this lease until the natural ish thereof: WITH power to the Second Party at his own expense, and under the exceptions and declarations before and after written, to search for, work, win, raise, store, carry away, and dispose of the minerals hereby let, and to char and calcine coal and ironstone, and to coke coals upon the ground, and to convert blaes and other refuse from the pits into bricks, and for these purposes to sink pits, drive mines, run levels, erect machinery for drawing water and minerals, form and use railroads and common roads, ponds, aqueducts, drains and water-courses, and erect houses or other buildings for the purposes of the works, and for the occupation of the miners, workmen, and others engaged on the mineral field hereby let; but the Second Party shall not be entitled to use for the purposes of the said works any existing covered drains, formed or laid through the said lands for agricultural purposes, except with the express consent of the First Party: DECLARING that the landlord and his agricultural or other tenants shall have right to use for all agricultural and other purposes any roads that may be formed by the Second Party upon the said lands AS ALSO to use any railways, sidings or tramways which may be constructed by the Second Party thereon, but in the event of such railways, sidings or tramways being used by the tenants of any other minerals, or of quarries, or sand, or gravel pits, under the First Party, they shall only be entitled to such use thereof as will not interfere with the working of the Second Party's business, and upon payment of a fair share or proportion of the annual cost of maintaining the

Lessee not  
to be en-  
titled to  
abandon  
as unwork-  
able to  
profit.

Power to  
work, &c.

Use of roads  
by landlord,  
&c.

Sand and  
clay for the  
colliery to  
be free of  
lordship.

same as such fair share or proportion shall, failing agreement between the parties, be fixed by arbitration: WITH LIBERTY also to the Second Party to make use of whatever sand, clay or freestone he may find in the workings, or in situations on the lands within the bounds of this lease, to be pointed out by the First Party, for the use of the colliery, or for the erection of workmen's houses or other houses and buildings to be used in connection with the colliery, and that without paying any rent or lordship to the First Party therefor: BUT DECLARING that the Second Party shall not be entitled to take sand, clay, or freestone free of rent or lordship as aforesaid, except for the purposes and in the manner herein specified, and that in all cases he shall be bound to pay and free and relieve the First Party of all claims for surface or other damages (to whomsoever incurred) arising from the taking of such sand, clay or freestone from any part of the said lands; and with power also to form hills for depositing the said coal, ironstone and other minerals, and for depositing debris resulting from the working of the colliery, and for charring, burning and calcining the said coal and ironstone,

Lessee to in-  
jure ground  
and houses  
as little as  
possible.

and for coking coals: AND the Second Party hereby BINDS and OBLIGES himself to conduct and carry on all operations hereby authorised, so as to do as little injury as may be to the ground within which the minerals hereby let are situated, and to the houses, ponds, drains, water-courses, roads, fences, woods and crops thereon; and any railways to be made by the Second Party shall be laid off so as not to occasion intersection or severance or to injure the said lands or the farm or other operations thereon: AND the Second Party shall be bound to provide in connection with the construction of such railways proper level-crossings, accesses, bridges, or other accommodation works for the use of the First Party and his agricultural tenants and others, at such place or places, and according to such plans or specifications as shall be pointed out and approved of by his factor for the time: AND DECLARING also that all houses or buildings for workmen and others employed in working the minerals hereby let, shall be erected on the said lands only on suitable sites, to be approved of by or on behalf of the First Party:

Restriction  
as to situa-  
tion of pits,  
buildings,  
&c.

AND the Second Party shall not be entitled to sink pits or to break the surface of the ground, or to make any coal-hills, char-hills, soilbanks, railroads, tramways, or other roads, ponds, aqueducts, drains, or water-courses, or to carry on any other surface operations

of any sort whatever, or to erect any engine-houses or other buildings within the distance of                      yards from the present farm-steading of (*specify*), and                      yards from any other house now on the lands in which the minerals hereby let are situated, or which may be erected in substitution for any houses now on the lands, such substituted houses being upon or immediately adjoining to the present sites, of the houses; and declaring further that all pits to be sunk or mines driven by the Second Party in virtue of this lease shall be at such places only as shall be approved of by or on behalf of the First Party: AND it is also hereby provided <sup>Barriers to be left.</sup> and declared that, except as hereinafter provided for, the Second Party shall be bound to leave a barrier of not less than five yards in breadth between his workings and those of any adjoining proprietor or tenant (including other mineral tenants of the First Party) where the works of the Second Party shall approach those of such adjoining proprietors or tenants; and that for the purpose of preventing injury to the future working of the minerals hereby let, or the workings of other proprietors or tenants, by the inflow of water or otherwise: BUT DECLARING, nevertheless, that the Second <sup>Power to lessees to communicate with other fields, on conditions.</sup> Party shall have power and liberty to work minerals lying in other lands than those contained in this lease, from pits made in the said First Party's lands, and also to work the minerals hereby let from pits in other lands than those before mentioned, and to form connections with adjoining workings for the purpose of obtaining a second outlet from the mineral workings under this lease, as required by any law that is now or may hereafter be in force, but always with and under the stipulations after written: AND it is AGREED that the Second Party may make and use any roads, tramways, or railways, both above and below ground, for the conveyance of other minerals than those raised from the mineral field hereby let, on payment of wayleave at the rate of per ton on all minerals so carried: BUT it is hereby expressly <sup>But only with other lands and minerals held by the lessee.</sup> DECLARED that the foresaid power to work the minerals hereby let from pits in other lands, and to work minerals in other lands from pits in the First Party's lands, and to use railways and tramways in and on the said lands for conveying minerals of other lands, is restricted to other lands and minerals held at the time of use by the Second Party; and, save as before agreed on, the Second Party shall have no power or liberty to communicate any of the pits or

mines in the First Party's lands, or any workings under the same, to any neighbouring proprietors or tenants, or any other person, without the previous consent in writing of the First Party: AND it is also specially provided and declared that no miners or other workmen employed by the Second Party shall be allowed to keep a dog, and that any of the said miners or workmen found trespassing on any part of the lands of \_\_\_\_\_, or poaching, shall be warned by the Second Party for the first offence, and for any subsequent offence shall be instantly dismissed from his service and not again engaged by him or on his behalf in any capacity; and printed notices forbidding trespassing and poaching under pain of dismissal shall be kept posted at the works of the Second Party: WHICH LEASE, with and under the conditions, provisions, restrictions and declarations before and after written, the First Party BINDS and ORLIGES himself and his successors and representatives to warrant to the Second Party at all hands: DECLARING ALWAYS that the First Party does not warrant the existence or quality of the coal, ironstone, or other minerals in the foresaid lands, nor the correctness of any plans or information which may have been communicated to the Second Party regarding the said minerals; the obligation and engagement hereby undertaken by the First Party being only that in case coal, ironstone, or other minerals of the nature hereinbefore specifically let shall be found within the said lands, the same shall be and are hereby let to the Second Party upon the terms and under the conditions before and after written, and no further: FOR WHICH CAUSES and on the other part, the said B BINDS and OBLIGES himself and his heirs, executors, and representatives whomsoever, all conjunctly and severally, to make payment to the said A, his heirs, executors and representatives whomsoever, or to his or their assignees, or to his or to their factor or others having their authority to receive the same, of the fixed rent or lordships and royalties aftermentioned, *videlicet*—(First) For the first two years of this lease, *videlicet*, from the term of \_\_\_\_\_ to the term of \_\_\_\_\_ no fixed rent shall be exigible, but during that period the said tenant and his foreshaids shall pay lordship or royalty at the rates hereinafter specified on all minerals worked from the said lands, together with rent for land used or occupied, and surface or other damages in respect of said working, all at the rates and in the manner hereinafter

Warrant-  
dice.

Existence  
and quality  
of minerals:  
not guaran-  
teed.

Rent.

Lordships.

(a) In this example the royalties are made dependent on the selling price, but it is not unusual to fix them at a definite sum, and wholly irrespective of price fluctuations.

(a) In this example the royalties are made dependent on the selling price, but it is not unusual to fix them at a definite sum, and wholly irrespective of price fluctuations.

be one-ninth (*or as the case may be*) of the selling price at the pit-head as aforesaid; *quarto*, the lordships or royalties payable upon coke or coked coal shall be the same as those payable or the time in terms of this lease upon all coal and dross from which such coke is made, and the quantities of coal and dross put into the coking ovens daily shall be entered in the books of the said colliery as of the same quality and price as if the same had been sold and removed from the pit-head in the raw state; *quinto*, on blackband ironstone calcined a lordship or royalty of per ton of twenty-two and one-half hundredweights for each day that the price of pig-iron warrants G. M. B. in the Glasgow market is under                      shillings per ton; when the price is shillings and under                      shillings,                      pence per ton; when the price is                      shillings and under                      shillings,                      pence per ton; and so on, rising and falling pence per ton of said weight for every daily rise or fall in the price of said pig-iron in the said market of                      shillings per ton above the said minimum price of                      shillings per ton; *sexto*, on clayband ironstone calcined                      pence per ton of twenty-two and one-half hundredweights for each day that the price of pig-iron warrants G. M. B. in the Glasgow market is under                      shillings; when the price is                      shillings and under                      shillings,                      pence per ton; when                      shillings and under                      shillings,                      pence per ton; and so on, rising and falling                      pence per ton of said weight for every daily rise or fall in the price of said pig-iron in said market of                      shillings per ton above the said minimum price of                      shillings per ton; *septimo*, for ironstone taken away raw, lordships at the same proportional rates as for calcined ironstone; and *octavo*, for the other minerals hereby let the following royalties or lordships, *videlicet*, for limestone raw                      pence per ton of twenty hundredweights, for fireclay                      pence per ton of twenty hundredweights, for common clay                      pence per ton of twenty hundredweights, for shale, yielding above thirty gallons of crude oil per ton,                      pence per ton of twenty hundredweights, for shale yielding under thirty gallons of crude oil per ton                      pence per ton of twenty hundredweights, for cannel coal or gas coal one-tenth of the selling price thereof at the pit-head, for composition bricks                      pence per thousand, for drain and roofing tiles                      pence per thousand,

and for cement                      pence per ton of twenty hundredweights:  
 PROVIDING and DECLARING ALWAYS, as it is hereby expressly provided  
 and declared, that in addition to the said rents or lordships the tenant  
 shall be bound to supply the landlord with                      tons of  
 coal annually (or such lesser quantities as he may desire) at the  
 price of                      shillings per ton at the pit-head, which coal  
 shall be free of lordship: WHICH fixed rent or lordships shall be <sup>Sums of</sup>  
 payable to the First Party at two terms in the year, Whitsunday <sup>payment.</sup>  
 and Martinmas, in manner following: THAT IS TO SAY, by equal  
 portions in the case of the said fixed rent of £                      sterling,  
 beginning the first term's payment thereof at the term of Whit-  
 sunday 19    , for the half-year immediately preceding, and the  
 next term's payment at the term of Martinmas 19    following, and  
 so forth, half-yearly, termly and proportionally thereafter, during  
 the currency of this lease, and that as a general payment to  
 account of the rents and lordships for the half-year preceding  
 each of the said terms respectively, during the period foresaid,  
 with a fifth part more of each term's payment of liquidate penalty  
 in case of failure in the punctual payment thereof and the interest  
 of each termly payment at the rate of five per centum per annum,  
 from the respective terms of payment of the same during the non-  
 payment thereof: AND so soon as the Second Party shall be in a  
 position to make up and render to the First Party his accounts  
 and returns for each year (which accounts and returns shall always  
 be made up and rendered within at least four weeks after the term  
 of Martinmas), he shall pay to the First Party the balance of rents  
 and lordships if any shown by the said accounts and returns to be  
 due to him, which yearly accounts, when audited and checked by  
 or on behalf of the First Party and found correct, shall be held  
 to be an accurate and conclusive statement of the rents and lordships  
 payable by the Second Party to the First Party under these presents  
 for or in respect of the year to which such accounts and returns shall  
 be respectively applicable, beginning the first payment of the said lord-  
 ships, if any, at the term of Martinmas 19    for the year from the  
 foresaid term of entry under these presents up to the said term of  
 Martinmas upon all or any minerals wrought by the Second Party  
 during the said period, and the next year's payment at Martinmas 19     
 for the year preceding that term, and so forth, yearly thereafter during  
 the currency of this lease, with a fifth part more of the said lord-  
 ships due at each term of liquidate penalty in case of failure in the

Powers to  
lessee to  
make up  
shorts.

Lessee to  
keep books  
of output  
and sales.

punctual payment thereof at the terms, and in the manner above specified, and interest at the foresaid rate of five per centum per annum on each term's payment from the date that the same shall fall due in terms of the provisions hereof until paid: BUT DECLARING that the First Party shall always have the option of exacting either the fixed rent or the lordships or royalties payable under these presents in any year, as he may elect prior to the thirty-first day of December in that year, and any payments which may have been previously made by the Second Party on account of the rents and lordships for the year ending at the immediately preceding term of Martinmas shall be deemed to have been payments to account of the fixed rent or of the lordships according to the election to be made by the First Party as at or prior to the date foresaid: AND it is hereby AGREED and DECLARED that in case, in any year during the currency of this lease, the lordships on the minerals wrought under this lease for the twelve months preceding any term of Martinmas shall fall short of the fixed rent exigible in the First Party's option in lieu of such lordships, and the said fixed rent shall have been paid by the Second Party, he shall be allowed to work up the amount of the deficiency out of the excess of the said lordships over fixed rents during any subsequent year of this lease: AND it is hereby further provided and declared that the Second Party shall be bound during the first two years of this lease, and in any case before he shall be entitled to take advantage of the first of the breaks hereinbefore provided for, to put down at his own expense not less than three bores to the main coal on sites to be approved of by or on behalf of the First Party, and that to a depth sufficient to prove the existence and thickness of the said main coal, and to exhibit the journals of such bores, and furnish copies to the First Party whenever called upon to do so: AND for ascertaining the quantities, and where necessary the different qualities or descriptions of the coal and ironstone and other minerals wrought out of the said lands, and the amount of the lordships payable for the same as hereinbefore stipulated, the Second Party hereby BINDS and OBLIGES himself to keep or cause to be kept regular and accurate books, and to enter or cause to be entered daily therein distinct and exact accounts of the whole coals, ironstone, and other minerals raised or put out of, and removed from, consumed, and manufactured upon the foresaid lands; which accounts shall specify the quantities of each class of minerals raised or put out at each pit or mine from the said lands,

and the quantities thereof sold or carried off in the raw state, or consumed or manufactured on the lands, with the names of the colliers and miners employed in working or putting out the minerals; and the exact quantities wrought and put out by each collier and miner, or company of colliers and miners; and the different qualities or descriptions of the said minerals, and in the case of substances not being coal or ironstone, the lordship on which depends on the selling price thereof, the quantities of each class of such substances raised, the quantities sold, and the quantities used by the tenant, and the names and addresses of all purchasers to whom such substances are sold, the quantities sold to each, and so far as necessary for regulating the lordship, the prices received; And in the event of the second party making communications with any other lands, and of the minerals hereby let being wrought from pits on any other lands, or in the event of minerals from other lands being wrought from pits in the said first party's lands, the accounts of the output and sales of all such minerals so worked in conjunction shall be exhibited to the first party along with the accounts of those from the lands contained in this lease, and care shall be taken to separate and keep distinct the minerals obtained from the mineral field hereby let, from any minerals obtained from any other lands; and the tenant shall enter the said minerals in separate books to be kept for the purpose, and shall distinguish the daily output and disposal of the minerals raised from each mineral field; and the tenant shall take care that each hutch of minerals, as it is drawn from the pit or mine, shall be accompanied by a tally indicating the name of each miner or company of miners sending the same up the pit or mine, and each hutch of minerals shall be carefully weighed at the pit or mine mouth, and the weight thereof, and miners or company of miners' names entered in the output books of the respective proprietors, so that the output of each miner or company of miners may be readily traced, checked, and correctly accounted for to each proprietor, to the same effect as if drawn up his own pit or mine, and the said first party shall have power, for his own satisfaction, at any time and as often as he may think proper, to have an inspection made of the books, plans, and workings of the minerals adjoining the mineral field hereby let; and the quantities of all the minerals wrought under this lease shall be ascertained by a correct steelyard or steelyards which the second party hereby binds

Provision for  
the case of  
communica-  
tion with  
other lands.

Weighing of  
hutches, &c.

Accounts to  
be trans-  
mitted by  
lessee half-  
yearly.

Landlord  
may ask for  
statutory  
declaration.

Landlord  
may appoint  
a check-  
grieve.

himself to keep at the works in proper working order and at suitable places for that purpose, and to have adjusted from time to time to the satisfaction of the first party; and the books and accounts of the second party, together with the returns to be made up by him therefrom, shall be exhibited and produced to the first party or to his factor or agent or any one appointed by him at the half-yearly settlement of the rent or lordships, which shall be made at the terms of Whitsunday and Martinmas of each year for the year preceding, and shall at all times be open at the works to him or his factor or agent, for inspection and examination, or for their taking copies or excerpts therefrom: AND the second party further hereby BINDS and OBLIGES himself to furnish and transmit to the first party, or to any person appointed by him, at the end of every half-year during the currency of this lease from the commencement thereof, an accurate and particular account of the whole minerals wrought and put out of and removed from the said lands, or consumed or manufactured upon the same as aforesaid, during the half-year immediately preceding, showing the different particulars above specified and required to be entered in the books to be kept by the second party as before mentioned, which accounts shall be signed by the second party, or by his manager or other person employed by him at the pits or mines, and the same, or an account of the lordships due to the first party in terms hereof, made up from the second party's books and accounts, or abstracts of accounts, signed by the first party or his factor or agent for the time, shall be sufficient to constitute and ascertain the amount of the said lordships which shall at any time be due by the second party, as a charge against the second party, upon which diligence may pass for payment thereof: AND it is hereby PROVIDED and DECLARED that the first party shall have right at all times, or at any time, to require the solemn declaration (substituted for oaths by Act of Parliament) of the second party, or of the managers or hillsmen acting for him, or of any other person or persons employed in the output of the minerals hereby let, or to require and take by the railway weights or otherwise such other information and evidence consistent with law as the first party shall think fit with regard to the justness and accuracy of the said books and accounts to be kept and furnished as aforesaid; and the first party shall have power if he thinks proper to appoint a check-grieve or clerk on each or any

of the coal-hills or mines, at his own expense, for the purpose of keeping accounts of the quantities and descriptions of the said minerals put out from the lands and carried away therefrom, or consumed or manufactured upon the same as aforesaid, which accounts may be compared daily, weekly, or monthly, if required, by the first party or by his check-grievs, factors, or agents, with the books kept by the second party; and also to erect at his own expense any weighing-machines he may think fit upon the ground, at places suitable and convenient for the second party, or upon any railway or tramway formed or to be formed through the said lands by the second party, for the purpose of checking the quantities of the said minerals, upon which the said second party shall allow the said minerals to be weighed if required, or the said quantities may be checked or ascertained in the option of the first party by the weights appearing in the books of the

Companies, or other public railway over which the said minerals shall be carried, and the lordships payable under this lease may accordingly be charged on the weights to be ascertained in any of the ways before mentioned in the option of the first party: AND it is DECLARED that royalties, and not the fixed rent, shall be taken by the first party in every year when the royalties exceed the fixed rent: And it is further PROVIDED and DECLARED that no lordship shall be charged or chargeable upon the coal used in the houses of the managers, or colliers, miners, and others employed in working the minerals hereby let, or upon the coal used for ventilation of mines, for hill-fires, for the furnaces of steam-engines, or for calcining the ironstone raised from the lands, or for the making of bricks, but the quantity of coal allowed to each miner or labourer shall not exceed

cwts. per month: AND it is hereby DECLARED that not more than one-tenth of the total output of coal raised annually from the said lands, the minerals in which are hereby let shall be free of lordship in any period of six months for the purposes immediately hereinbefore specified: And further, that if any coals wrought from other lands shall be raised by pits in the lands the minerals in which are hereby let, such properties shall be charged, their proper share of such free coal in proportion to output and no royalties shall be charged on bricks or tiles used in connection with the colliery either above or below ground. AND the second party hereby BINDS and OBLIGES himself, over and above the

Royalties to be taken when they exceed fixed rent.

No lordship on coal used by pit or colliers.

Tenant to pay damages caused by workings,

and to relieve land-  
lord of  
claims by  
third  
parties.

foresaid rent or lordships, to pay to the first party, and to the tenants and occupiers of the lands under, upon, and adjoining which the working and operations under this tack are to be carried on, and of the houses, buildings, walls, and fences thereon, or other parties having right to claim the same respectively, all damages of whatever kind which may be done or occasioned by the workings and operations of the second party to the surface of the said lands, and to the crops and pasture thereon and produce thereof, and to the woods, plantations, walls, fences, and others, and to the houses, buildings, drains, wells, watering-places, reservoirs, and erections at present existing thereon, and to free, relieve, and indemnify the first party of and from all claims for compensation for or in respect of any such damages at the instance of any person or persons whatsoever, and of all loss and expenses which may be incurred by the first party on account or by reason of such claims, and also to pay to the first party a yearly rent or compensation at the rate of £            per acre per annum for all ground broken, taken, or appropriated by the second party for the purposes of this lease, including in such purposes pits and spoil banks, engine-houses, miners' houses, or other buildings, waggon roads, common roads, or others in any manner of way, beginning the first payment of such yearly rent at the term of Martinmas, 19   , for so much ground as shall have been taken and occupied during the preceding year, and so on yearly thereafter at the term of Martinmas in each year for the extent of ground which may be taken from time to time during the currency of this lease, or until such ground shall have been restored in manner hereinafter provided: And the second party shall also settle with the agricultural tenants of the first party for and in respect of any such claims for land so taken, which may at present be let on lease to or possessed or occupied by them, and at the end of the present agricultural leases thereof, such land shall be paid for by the second party to the first party yearly as aforesaid at the said term of Martinmas in each year at the rate hereinbefore specified with respect to land in the natural possession or occupation of the first party, and in the event of injury or damage being caused to any of the steadings, houses, or other buildings presently existing upon the said lands or to any houses or other buildings to be hereafter erected in substitution therefor by the working of minerals under or adjacent to the same, the second party shall be bound,

to pay the expense of repairing such damage as the same shall be instructed by a statement under the hand of the first party or his factor or agent for the time: And at the expiry or sooner termination of this lease, the second party shall be bound to pay compensation for land damaged according to the extent of the damage, or to restore or pay to the first party the sum requisite for restoring all ground occupied or damaged to a state fit for agriculture or pasture not inferior to its state prior to being so occupied or damaged and that at the termination of the lease or when no longer necessary for the use of the works, and to restore or pay for restoring all fences broken or injured by the second party to their former state, as soon as the same can be done without interfering with the works; as also properly and securely to enclose with a sufficient fence all pits, buildings, roads, railways, tramways, ponds, reservoirs, and any other ground occupied by him in connection with the said works, and to keep the same fenced with sufficient fences which shall be maintained in good order and repair during the currency of this lease, and to leave them so at the expiry or sooner termination thereof; and, if required by the first party, but not otherwise, to fill up all pits and mines made or used by him which may be no longer required: Declaring that the second party shall not be entitled to fill up such pits without the consent of the first party in writing first had and obtained thereto, provided always that, instead of requiring any disused pits or mines to be filled up as aforesaid, the first party shall be entitled to call upon the second party to cover over the pit or mine mouth with substantial timber logs or sleepers, and thereafter to enclose the same with a sufficient stone wall: AND it is hereby PROVIDED and DECLARED with regard to all claims on the part of the first party for damages, or for rent or compensation for ground occupied or damaged, or for the restoration of ground or fences damaged by the operations of the second party, that the same shall in the event of the parties failing to adjust the same themselves be referred to and ascertained and fixed by the decision and decree-arbitral of two neutral persons, one to be chosen by each of the parties from time to time as such claims may arise, or failing an appointment by the parties, then to two neutral persons to be named by the Sheriff of the County of                      on the application of either party, as arbiters, or in case of the said arbiters differing in opinion, by an oversman to be named by them before entering

Also to pay compensation for land occupied or damaged.

Ground, pits, &c., to be enclosed.

Arbitration clause.

upon the reference, all expenses of such reference and arbitration being payable by the party found liable by the arbiters or oversman to pay the same : AND the second party hereby BINDS and OBLIGES himself to carry on the whole mining and other operations in the mineral field hereby let in a regular, systematic, and skilful manner, by the long-wall or complete excavation system wherever practicable ; and when the stoop-and-room method has to be resorted to, then and in that case the stools or pillars shall be left of such a size as shall ensure their being as far as practicable entirely wrought out at the end of the forward working of any pit or mine, and in the course of the back or pillar working thereof, and so that as little coal as possible shall be lost in the course of working the said mineral field, but always with due regard to the present and future advantageous working of the minerals hereby let, and the second party shall be bound to carry on the working in such a manner that the working of any one or more of the seams shall not prevent, injure, or impede the working of any other seam or seams at the expiry or sooner termination of this lease by the first party or any person deriving right from him, the workings being always carried regularly and progressively forward and as little head or other coal as possible being left in the roofs or pavements of the mines or levels : AND the second party BINDS himself to leave sufficient pillars of coal and ironstone around the bottom of each pit, and to keep and maintain the going pits, and the roads, air-courses, and other workings thereof, free, clear, open, and passable for proper access to all the coal and ironstone or other minerals that may properly be wrought out, and that as little as possible of the same may be lost, and to form and maintain proper water-levels, so that the water in the workings may freely pass off to the bottom of the pit used for draining the mineral field, at the dip of the metals, and to leave all going pits, roads, air-courses, water-levels, and other workings, in proper order and repair at the termination of this lease : AND he further BINDS and OBLIGES himself, at his own expense, to furnish and erect the whole machinery and utensils necessary for working the said minerals : AND, except in so far as required for the due exercise of the powers hereby conferred of working the minerals in the lands embraced in this lease from pits in other lands, or the minerals in other lands from pits in the said lands, or of making communications to secure a second outlet from the workings, the second party BINDS and OBLIGES himself not.

Methods of  
working.

Pit-bottom  
pillars to be  
left.

Lessee to  
furnish  
machinery.

to work out any coal or ironstone or minerals beyond the actual boundaries of the field hereby let, or within five yards of the said boundaries, as hereinbefore provided for, otherwise he shall be liable in payment to the first party, in addition to the fixed rents or lordships stipulated to be paid for the minerals let under this lease, of all damages and expenses of every kind which shall be suffered or incurred by the first party in consequence of such contravention: But declaring that this stipulation shall not apply where the second party shall have, as aforesaid, arranged to work any adjoining mineral field in conjunction with the mineral field hereby let: AND it is hereby expressly PROVIDED and DECLARED that nothing herein contained shall be deemed or construed as authorising the second party or his foreshaids to do any act affecting the minerals of adjoining proprietors which the first party himself is not entitled to do free of all claims by such adjoining proprietor, and that all acts done by the second party affecting adjoining lands or the minerals therein shall be done at the sole risk of the second party, and he shall be bound to relieve the first party of and from the consequences of the same: AND it is hereby PROVIDED and DECLARED that the first party shall at all times during the continuance of the present tack have full power, by such person or persons as he shall think fit, to enter into, examine, and inspect the whole workings and operations of the second party under this lease: AND FURTHER, that on the requisition of either of the parties, the workings and operations of the second party shall be surveyed from time to time, and reported upon and laid down upon a plan, by a competent person to be named by the parties hereto mutually or in case of their differing as to the nomination of such person, by a person to be appointed by the said Sheriff, and the first party shall be furnished with a duplicate or copy of such plan or plans of the workings showing the results of all such periodical surveys, and at the expiry or sooner termination of this lease, the whole of such plans and surveys shall be handed over to the first party as his absolute property free of charge, all of which surveys, reports, and plans shall be made out at the mutual expense of the parties hereto: AND FURTHER, the first party shall have power to inspect such plans as the second party shall be bound to make of his underground workings under any general statute passed or to be passed for the regulation of mines or mining operations, and to take copies thereof if he shall think proper: AND it is hereby PROVIDED and DECLARED that

Five yards' barrier to be left.

Acts of lessee in adjoining lands at his risk.

Inspection and surveys.

Landlord to be entitled to inspect lessee's plans.

• Irritancy in case of bankruptcy, &c., of lessee.

Obligation on lessee to remove.

Unsold minerals may remain for six months.

Power to landlord to acquire machinery, &c.

in case the second party or his foresaids, or the assignees to whom this lease shall have been assigned by the second party, with consent of the first party as aforesaid, shall have become bankrupt or be sequestrated, or if at any time during the currency of this lease there shall be two consecutive years of the said fixed rent or lordships due and unpaid, and if the same shall not be paid within fourteen days after being demanded, or if any poinding shall be executed on the ground of the said lands for a debt exceeding fifty pounds, or of any sequestration of the minerals produced from the said lands during this lease, or of the machinery or utensils at the works, or any part thereof, shall be taken out, then and in any of these cases it shall be in the power of the first party, if he shall think proper, to declare this lease void and null and of no force and effect without any declarator or process of law to that effect, in like manner as if the same had never been entered into; or in the event of any assignee in the lease becoming bankrupt, or if any of the foresaid other events occur after an assignation of this lease, then it shall be optional to the first party either to declare this lease null and void as aforesaid, or to declare the assignee's right only to be null and void, and in the latter case to call on the second party to implement the tenant's obligations therein; and such call shall be deemed a complete retrocession to the second party of the rights of the assignee in this lease: AND the second party BINDS and OBLIGES himself to flit and remove himself and his family, servants and workmen, and goods and effects, from and furth of the subjects hereby let, at the termination of this lease, whenever that shall take place: DECLARING, nevertheless, that such coal, ironstone, or other minerals as may remain on the hill unsold at the termination of this lease, shall be allowed to remain six months if necessary, to be sold and disposed of within that period by the second party, he being bound to pay damages or compensation for the ground so occupied during the whole or any portion of the said period of six months: AND FURTHER DECLARING that at the expiry or sooner termination of this lease the first party shall have right, if he think proper, to take the whole engines, machinery, apparatus, rails, and utensils belonging to the second party, and connected with the working of the minerals hereby let, either above or below ground, at a fair valuation, to be made by two men of skill, one to be chosen by each of the parties as arbiters or valutors, or by an oversman to

be named by such arbiters or valuers in the event of their differing in opinion, or by arbiters or an oversman to be named by the said Sheriff, on the application of either of the parties, in case the parties themselves shall fail or delay to name such arbiters or oversman; and the second party shall be bound six months before the termination of this lease to make offer in writing of the said engines, machinery, apparatus, rails, and utensils to the first party, who, if he accept of the said offer, shall be bound to intimate his acceptance within three months after receiving the same, and shall pay the value of the said articles, to be ascertained as aforesaid, within one month after the termination of the lease; the first party being entitled either to take the engines, machinery, apparatus, rails, and utensils at all the pits or mines, or to take the engines, machinery, apparatus, rails, and utensils at any one pit or mine, without being bound to take those at any other pit or mine, but he shall not be entitled to take a part only of the said articles at any one pit or mine, but shall be bound to take the whole engines, machinery, apparatus, rails, and utensils at that pit or mine which may be in use and in working condition at the time; and the value thereof shall be estimated by the said arbiters or oversman according to such principle as they deem reasonable in the circumstances; but in case and in so far as the first party shall not accept the said offer to be made to him as aforesaid, the second party shall be entitled to remove the said engines, machinery, apparatus, rails, and utensils, and shall be allowed six months after the termination of the lease, for removing, dismantling, and carrying away the same, provided he does not thereby interfere with or impede the working of the minerals by the first party or by a new tenant; and he shall pay damages or compensation for the ground occupied by him during the whole or any portion of said period of six months; And the second party shall not be entitled at the expiry or termination of this lease to take down and remove any houses or any other buildings which he may have erected on the said lands with stone or other material obtained by him in the lands free of lordship, excepting in so far as it may be necessary partially to take down buildings for the purpose of enabling him to remove such machinery and fittings as may not be taken by the first party on the conditions before stipulated, but he shall be bound to leave such houses or other buildings to the first party; and in the case of buildings erected

Landlord must take the whole at any one pit.

If landlord does not acquire plant, lessee to have six months to remove.

Proviso as to certain buildings.

by him with materials not obtained by him from the lands free of lordship, the first party shall have the option of taking the said buildings at a valuation by arbiters or an oversman appointed as aforesaid, and in the event of the first party electing not to take such buildings the second party shall be entitled to remove them:

Implement  
clause.

AND both parties BIND and OBLIGE themselves to implement and fulfil to each other their respective parts of the premises, under the penalty of           sterling, to be paid by the party failing to the party performing or willing to perform, over and above performance: DECLARING that the obligations hereinbefore undertaken by or imposed upon the parties hereto under the description of the "first party" and the "second party" shall be held to be applicable to and binding upon the heirs, executors, and successors of the said parties respectively as landlord and tenant of the minerals hereby let for the time, and all other persons who are or may be legally bound as representing the said parties respectively or otherwise, for fulfilment of the said obligations: AND both parties consent to the registration hereof and of any awards or decrees-arbitral interim or final to be pronounced by the arbiters or oversman in any arbitration or reference under this lease for preservation and execution.—IN WITNESS WHEREOF, &C.

## 2. Lease of Coal.

IT is CONTRACTED and AGREED between A, heir of entail in possession of the lands and others aftermentioned (hereinafter referred to as "the first party"), of the first part, and the Company, Limited, incorporated under the Companies Acts, 1862 to 1900 (hereinafter referred to as "the tenants"), of the second part, in manner following—that is to say, the said first party, in consideration of the fixed rent, lordships, and other prestations hereinafter mentioned, hereby sets, and in tack and assedation lets to the said

Landlord  
and tenant.

Company, Limited, but excluding assignees and sub-tenants, legal or conventional, creditors and trustees, or managers for creditors of every description, ALL AND WHOLE, the whole seams of coal lying in or under that portion of the said entailed lands and estate of           , and coloured           on the plan hereto annexed and signed by the parties as relative hereto, and extending

Subjects let.

to            acres imperial measure or thereby, and lying in the  
parish of            and county of            : BUT EXCEPTING Minerals  
under public  
roads.  
and RESERVING ALWAYS the minerals under and along the sides of  
all public roads now running through the lands, in so far as the  
working of such minerals is contrary to law or beyond the power of  
the first party to grant, the tenants being entitled to work the same  
under and alongside the said roads in so far as the first party may  
legally work the same, and subject to the same conditions in all  
respects: PROVIDED that, in the event of the tenants working under  
or within five yards of any road, they shall be bound securely to  
pack and underbuild the ground, so as to prevent as far as possible  
damage being done to the roads; but in the event of any damage  
occurring to the said roads, notwithstanding the use of such pre-  
cautions, they shall be liable therefor, and shall be bound to relieve  
the first party of all claims in connection therewith: And in regard Minerals  
under public  
railways.  
to minerals under any public railway now running or that may  
hereafter be constructed through the lands, the rights of the tenants  
with reference to the working of the said minerals shall be subject  
to the provisions thereanent contained in the Railway Clauses Con-  
solidation (Scotland) Act, 1845, and any other Acts relating to  
railways in Scotland, but without prejudice to any claims which the  
said tenants may have against the railway company or companies  
forming, constructing, or using such railway in connection with the  
working of the said minerals: AND ALSO RESERVING to the first Minerals  
reserved.  
party the whole gas-coal, the mineral known as Torbanehill mineral,  
and all Blackband ironstone, clayband or mussel-band ironstone,  
shale and other metals and minerals of every description other than  
those hereby expressly let, and all seams of coal under eighteen  
inches in thickness which may be found associated with any other  
valuable mineral, and falling to be worked in connection therewith,  
lying within the area hereby let, or any part thereof, with full power  
to him by himself or his tenants of the same to sink pits to the said  
gas-coal, and other metals and minerals hereby reserved at any  
place, either through the solid coal hereby let or through the waste  
thereof, for the purpose of working out the same, and to work, win,  
and carry away the same at pleasure: BUT DECLARING that all such  
operations shall, so far as practicable, be carried on in such a manner  
as to prevent any water being sent either into the coal hereby let or  
the waste thereof, and so as not unduly to injure, disturb, or inter-

<p>Period of endurance.</p> <p>Breaks.</p> <p>Working of minerals.</p> <p>Water supply.</p> <p>Fencing of the débris heaps.</p> <p>Distance of pits, &amp;c., from dwelling- houses.</p> <p>Power to take ground in connection with workings.</p>	<p>fere in any respect whatever with the working of the coal hereby let: And that for the period of                      years from and after the term of                      : DECLARING that it shall be in the power of the tenants to terminate this lease at the term of                      , and at the expiry of every third year thereafter, upon giving at least six months' previous notice in writing to the first party of their inten- tion so to do: AND DECLARING further that this right and liberty shall supersede any right which the tenants might have claimed to abandon this lease on the ground of the minerals hereby let being unworkable to profit, or on any other legal ground or pretext whatever, all rights of which nature they hereby expressly renounce and discharge: AND in the event of the tenants taking advantage of any of the breaks provided in their favour, they shall be bound at the time of giving up this lease to fulfil all the obligations which would have been incumbent on them at the natural expiration thereof in the same manner as if it had come to a conclusion by the lapse of the full period thereof: WHICH subjects are hereby let with power to the said tenants at their own expense to search for, bore, dig, work, win, carry away and dispose of the coal hereby let, and to sink pits on the said lands, and also to erect engines and machinery and to make roads, reservoirs, and aqueducts upon and through the subjects, the coal in which is hereby let: DECLARING that in the formation of any ponds, reservoirs, or aqueducts, the tenant shall be bound to leave sufficient water for all agricultural and house- hold purposes, and care shall be taken not to interfere with any exist- ing rights; AS ALSO with power to form hills for depositing minerals or débris thereon, the said tenants fencing all these with a fence not less than four feet high, of such construction as to exclude cattle and sheep, and to keep the same in good repair during the currency hereof: PROVIDING and DECLARING further, as it is hereby specially provided and declared, that no pits shall be sunk or minerals or débris deposited within one hundred yards of any dwelling-house now standing or hereafter to be erected upon the lands the minerals in which are hereby let, without the consent in writing of the first party or his factor or agent: AS ALSO with power subject to the obligation aftermentioned, to take ground adjacent to the works where approved of by the first party for conducting their several operations, and to do everything requisite for raising, carrying away and disposing of the coal hereby let, the</p>
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tenants being always bound to pay to the party or parties entitled thereto, whether the said first party or his agricultural tenants or feuars, the whole compensation payable or exigible for damage done by or through any of the said operations and for ground occupied in connection therewith, all as specially hereinafter provided for:

DECLARING ALWAYS, as it is hereby provided and declared that the said tenants shall, so far as reasonably practicable, be bound to

Damage to  
minerals by  
water.

carry on their operations in such a manner as to prevent any water flowing down to the gas-coal and other metals and minerals hereby reserved either by the pits to be sunk by themselves or by the first party or his tenants or otherwise, and they are hereby prohibited from doing anything whereby the gas-coal and other metals and minerals hereby reserved may be unduly injured, or the operations of the first party or his tenants in working the same (if such should take place) disturbed or interfered with: AND ALSO DE-

CLARING that the tenants shall be bound, if so required, to give up

Working of  
reserved  
minerals.

to the first party or his foresaids all exhausted pits and all other pits which have ceased to be useful to them in working the coal hereby let, in order that the same may be used for working or ventilating the said gas-coal and other metals and minerals hereby reserved, if and when the same shall be worked: WITH POWER

ALSO to the said tenants, upon paying compensation for the ground occupied as hereinafter provided for, to erect workmen's houses

Power to  
erect  
workmen's  
houses.

upon such sites on the said entailed estate as may previously have been approved of in writing by the first party or his factor, and not more than half a mile distant from the said works, and the workmen inhabiting them shall be taken bound by the tenants to comply with all rules and regulations which the first party may from time to time establish for the maintenance of good order, cleanliness, and other sanitary requirements, and for the prevention of trespass and poaching, and in case any of the occupiers shall fail to comply with any of these rules and regulations after due warning given, the said tenants shall be bound, on a written requisition by the first party or his factor forthwith to remove any offending party from the premises, and shall not let to him any other house built by them for the accommodation of their workmen; and in no case shall the first party be liable for damages to the workmen's houses by subsidence or otherwise from the underground workings of the minerals thereunder: WITH POWER ALSO

Power to  
form  
railways.

to the said tenants to form and maintain a railway or railways from any of the pits on the coal-field hereby let for the purpose of conveying to market the coal raised under this lease; but it is hereby specially provided and declared that, in the event of the said tenants forming or acquiring any private line of railway for the transport of their minerals to the

Railway, or any other railway, the first party, and his other mineral tenants foresaid, shall have right, if they see fit, to use the said private railway, or railways, on payment of a wayleave of

per ton for each ton of 20 cwts. of minerals and produce conveyed along the same, and also to use the connections and to cross the railway, or railways, made or to be made by the said tenants, without any wayleave or charge, except one-half of the expense of keeping such connections in repair so long as used by the said first party or his other mineral tenants foresaid, but that always in such a way as not to incommode or injuriously interfere with the traffic on or by the said railways and others, and the use thereof by the said tenants; WHICH TACK, with

Warrantdce. and under the conditions and reservations herein contained, the said A binds and obliges himself, and his heirs of entail and successors in the said entailed lands and estate of

Fixed rent. hands: For which causes, and on the other part, the said Company, Limited, bind and oblige themselves, and also the capital, stock, and profits of the said company, to pay to the first party and his foresaids for the coal hereby let—(*primo*), a fixed minimum yearly rent at the rate of

pounds sterling, for the first two years of this lease—*i.e.*, for the period from the term of

to the term of : AND (*secundo*), from and after the said term of

until the termination of this lease a fixed or minimum yearly rent at the rate of

Lordships. pounds sterling per annum, or in the option of the said first party, and in lieu of the said respective fixed or minimum yearly rents, *primo* and *secundo* above mentioned, either, first, a lordship of pence per ton for each ton of 20 cwts. of unscreened coal or triping sold or removed from the lands in which the coal is hereby let; or, second, and as the said first party shall elect, a lordship equal to one-<sup>th</sup> of the selling price of such unscreened coal or triping at the pit after the price of the same, over an average of one year, shall reach the sum of

shillings per ton or

upwards, without any deduction for discount, commission, bad debts,

or otherwise :—DECLARING that no lordship shall be exigible for or in respect of coal or dross used for engine fires or pit fires, or for domestic purposes by the workmen employed at the works; which rents or lordships shall be payable to the said first party at two terms in the year, Whitsunday and Martinmas, in manner following—that is to say, First, the financial year under these presents shall be held to run as from                    to                    ; and, Secondly, one-half of the fixed or minimum rent for the year shall be paid at the term of                    — that is to say, the                    day of                    , and the other half thereof at the term of                    —that is to say, the                    day of                    in each year as a general payment to account of the rents and lordships for the half-year preceding each of the said dates respectively; and so soon as the tenants shall be in a position to make up and render to the said first party their accounts and returns for each half-year, as after provided for, they shall pay to the said first party the balance of rents and lordships, if any, shown by the said accounts and returns to be due to the first party, commencing the first payment of the said fixed or minimum rent above provided as at the term of                    for the half-year preceding that date and the next term's payment at the term of                    thereafter, and so forth half-yearly and termly thereafter during the currency of this lease with one-fifth part more of the rents and lordships, due at each term of liquidate penalty in the case of failure in the punctual payment thereof; and also with interest at the rate of 5 per centum per annum on each term's payment from the date when the same shall fall due in terms of the provisions hereof until paid : DECLARING that the first party shall always have the option of exacting either the fixed rent or the lordships payable under these presents, in any one financial year or period as he may elect prior to the                    day of                    immediately succeeding the close of such financial year, and any payment which may have been previously made by the said tenants on account of the rent and lordships for the year or period ending at the immediately preceding term of                    shall be deemed to have been payments to account of the fixed rent or lordships according to the election to be made by the first party : DECLARING that if in any financial year of the lease the amount of the lordships payable by the tenants shall fall short of the fixed rent, and the said first party shall have received payment of the fixed rent in full, the tenants shall

Engine and  
workmen's  
coal free.

Terms of  
payment of  
rents and  
lordships.

Option of  
landlord as  
to fixed  
rents or  
lordships.

Provision as  
to shorts.

**Returns to  
be made  
half-yearly.**

statement of the rents or lordships payable by the tenants to the first party for or in respect of the half-year to which such accounts or returns shall be applicable and shall warrant a charge being given for payment thereof: AND the first party shall be entitled in addition to such modes of ascertaining the outputs of the said minerals, but always at his own expense, to appoint a check-grieve or clerk at each or any of the pits, mines, or open casts, or other places where the said minerals are being put out, removed or disposed of, for the purpose of either taking an account of the quantity thereof, or of seeing them correctly weighed on the said steelyards or of testing the accuracy of the said steelyards or weights, which accounts may be compared at any time with the books kept by the tenants: FURTHER, the first party shall have power to erect at his own expense any weighing machines he may think fit at the mouths of the pits, or mines, or at the open casts, upon which weighing machines the tenants shall allow the minerals to be weighed if required for the purpose of checking the weights or quantities; AND the tenants bind themselves to work the coal hereby let in a regular and workman-like manner, and so far as practicable to carry the whole workings regularly and progressively forward without waste or leaving any head coal permanently upon the roof, and to the effect that as much coal and dross may be taken out of each acre of the subjects hereby let as may be consistent with the economical working thereof; and in particular that they shall so far as practicable work the coal the whole thickness of the seam between the roof and the pavement, and shall not leave any areas of coal unworked in such a position that they cannot afterwards be wrought from the roads or levels then in operation, or which shall be in danger of being cut off from the other workings and lost, and should any dispute arise as to the tenants' mode of working, or as to any areas left unworked, the same shall be referred to two mining engineers of standing to be mutually chosen by the said first party and the said tenants, or to an oversman to be named by them in case of their differing in opinion: DECLARING that the said tenants shall be at liberty to adopt either the long-wall stoop and room or open cast mode of working as they may deem most advantageous, but they shall be bound where the coal is not worked by the long-wall method to form and leave sufficient pillars in the first instance around all pit bottoms, and along the sides of the under-

Landlord  
entitled to  
appoint  
check-  
grieve,

and to  
erect  
weighing  
machines.

Coal to be  
regularly  
and properly  
wrought.

Mode of  
working.

Removal of  
pillars.

ground roads, air courses, and water levels, which pillars and all other pillars shall be left of such dimensions as the mining engineer of the first party shall instruct, in order to ensure their being completely removed before the abandonment of a pit: BUT that always as regards such removal, from such places only, (except with the consent of the first party or his mining engineer in writing), as are free from buildings, railways, or water on the surface, and such removal of pillars shall always be done in the upper seams before the lower, and no pillars shall be removed from the bottom of any pit or pits which, in the opinion of the first party or his mining engineer, are necessary for the further working thereof, or for the support of any machinery thereat, unless and until the consent in writing of the first party or his mining engineer shall be given thereto: FURTHER, the tenants bind and oblige themselves to keep all pits, roads, or courses, and water levels clear and open for proper access to the coal hereby let, and in order that it may be properly wrought and subject to the inspection of the first party's mining engineer at all suitable times: AS ALSO to form proper levels so that the water in the workings may freely pass off to the bottom of the pits used for draining the coal-fields to the depth of the coal, and generally to carry on the said workings so that the working of one or more seams shall not unduly impede the working of any other at the termination of this lease: And where any of the minerals hereby let are worked open cast, the soil shall be carefully lifted and deposited apart from the deeper tiring, and when the open-cast workings are exhausted they shall be filled up and levelled, and the soil previously deposited apart as aforesaid shall be replaced so as to render the surface fit for agricultural purposes as it previously was, otherwise damages shall be paid in manner after provided: AND the tenants shall not communicate to any other proprietor the use of any of the coal-pits, or mines, or workings of the minerals hereby let, or the railways connected therewith, nor shall they make any encroachments or connections either above or below ground, upon or with the lands or workings of any neighbouring proprietor or mineral tenant, or approach below ground nearer than five yards to any march of the lands in which the minerals hereby let are situated, under a penalty of                   for each trespass, over, and above removing or closing up or putting an end to such communication or encroachment, and repairing or paying for all damages arising therefrom: FURTHER, the

Open cast  
working.

Communica-  
tions not to  
be made  
with neigh-  
bouring  
fields.

tenants bind themselves to discourage and prevent to the utmost of their power the workmen or others in their employment from trespassing or poaching upon the said lands and estate of                      and upon the demand of the first party, to discharge from their employment and works any collier, workman, or other person discovered so offending after having been once warned, and the tenants shall not allow any colliers or sporting dogs to be kept on or taken to the ground, the minerals in which are hereby leased, by any person in their employment: AND for the purpose of more clearly showing the state and condition of the whole operations under this lease, the tenants BIND and OBLIGE themselves to cause the whole workings to be regularly surveyed, at their own expense, at least once every six months by a professional surveyor to be agreed upon mutually, and plans of such surveys shall thereupon be prepared, and if so desired by the first party (but in that event only), duplicate copies thereof shall be made and delivered, one to the first party and the other to the said tenants, the expense of which duplicate plans (if made in duplicate as aforesaid) shall be borne equally by the first party and the tenants, which surveys and plans shall show at the end of every such period the pits, levels, rooms, wall faces, dykes, hitches, and troubles that are met with, and the portion of the coal still remaining to be wrought, and no part of the mines shall be shut up or abandoned until a correct survey and plan to the effect aforesaid has been exhibited to the first party or his mining engineer, and one or other of them shall have approved thereof in writing: AND the whole of the working plans and surveys in the possession of the tenants or under their control shall be exhibited to the first party or his mining engineer when required, and be delivered over to the first party as his absolute property at the termination of this lease free of charge: FURTHER, the tenants shall be bound to furnish the first party with copies of the journals of all bores made by them, and the first party shall have liberty at all times, on giving two days' previous notice to the tenants, to send competent persons to examine and report upon the several mining operations of the tenants, and in making these examinations and surveys the overseers and roadsmen of the tenants shall be bound to accompany the surveyors employed by the first party, and give all necessary assistance and facilities in the survey: FURTHER, the tenants shall be bound properly and sufficiently to fence all ground

Tenants to prevent poaching by workmen.

Workings to be surveyed.

Exhibition and delivery of working plans.

Journal of bores.

Tenants to fence ground.

Filling up  
of old pits.

Payment of  
surface  
damages and  
damages to  
houses,  
works, &c.

Damage to  
roads,  
railways, &c.

taken possession of by them at the time of taking possession, and to maintain and uphold the fences so made in good and sufficient repair during their possession thereof, and also at all times during the currency of this lease to keep fenced and secured in a sufficient manner the roads, railways, and tramways, as well as the pit mouths and other works to be made, and to take upon themselves all risk and liability for damage through accidents or otherwise arising in any way from their operations: AND the tenants BIND and OBLIGE themselves if and when required by the first party or his mining engineer to fill up all pits which may be wrought out or abandoned, or which may be no longer of use for the purposes of the works: BUT DECLARING that the said tenants shall not be entitled to fill up such pits without the previous written consent of the first party or his mining engineer, and the tenants shall fence securely with a wall of stone and lime six feet high any old pits which it shall be necessary to leave open, or in the option of the first party shall cover over the same substantially with permanent materials, the tenants maintaining all such fences and materials in a proper state of repair during the currency of this lease, and leaving them in the like condition at the termination thereof: AND the said tenants BIND and OBLIGE themselves and their foresaids to pay and free and relieve the first party of all damage of every kind caused by or arising from any of their operations, whether the same shall happen above or below ground, and whether occasioned to the surface of the ground or the mineral workings, and particularly and without prejudice to the said generality they bind and oblige themselves to pay and compensate the first party, and also the agricultural tenants, possessors, and feuars or tenants under building lease of the lands, the minerals in which are hereby let, for all damage done to crops, plantations, fences, water-pipes, ponds, and drains or otherwise, and also to compensate the first party for or free and relieve him of all damage done to houses and buildings erected or to be erected upon the said lands by feuars or tenants under building lease from the said first party in virtue of any feu rights or building leases granted or to be granted by him: As ALSO to pay and free and relieve the first party of all damage done to private and public roads, railways, reservoirs, and drains by or through any of the several operations hereby authorised as the same shall, where practicable and competent, be ascertained by

reference as aforesaid : AND the tenants shall be bound to pay to the first party damages for all ground in his natural possession which may be taken and occupied by them for works, railways, machinery, coal-hills, workmen's houses, or buildings, or for other purposes, and that, at the annual rate of \_\_\_\_\_ pounds sterling per imperial acre, payable at the term of \_\_\_\_\_ in each year during the currency of this lease, and beginning the first payment thereof at the first term of \_\_\_\_\_ which shall happen after such ground shall be taken and occupied as aforesaid: AND where the ground taken and occupied by the tenants for all or any of the aforesaid purposes, or for other purposes connected with their working of the said minerals hereby let, is let under lease or occupied by agricultural tenants or by feuars or tenants under building lease from the first party, the tenants under these presents shall be bound as they hereby bind and oblige themselves to free and relieve the first party and his foressaids of and from all claims at the instance of the said agricultural tenants, feuars, or tenants under building lease, either for the annual value of the ground so taken and occupied, or otherwise in connection with such occupation, and after the termination of the existing agricultural leases the said tenants shall pay to the first party damages for the ground taken and occupied as aforesaid at the aforesaid annual rate of \_\_\_\_\_ pounds sterling per imperial acre: DECLARING that the first party shall be entitled at the natural termination of this lease either to take the dwelling-houses erected or to be erected by the tenants on sites which shall have been approved of by the first party as aforesaid (or which shall not have been objected to by him after he shall have been made aware of the intention of the tenants to erect such dwelling-houses) at their then actual value, according as such value shall be ascertained in manner foressaid, or in the option of the first party he may grant a feu right thereto, or a building lease thereof for not less than ninety-nine years in favour of the tenants, for payment of an annual feu-duty or tack-duty at the rate of \_\_\_\_\_ pounds sterling per imperial acre, and under the usual conditions of feu or building lease rights on the said entailed lands and estate of \_\_\_\_\_ : AND the tenants BIND and OBLIGE themselves at the expiry or sooner termination of this lease to leave the whole mines, levels, and wall fences, except in wrought-out or abandoned pits or seams, open and well ventilated: AND

Rents payable for ground in landlord's possession.

Compensation for ground taken when under feu or lease.

Power at expiry of lease to take dwelling-houses, &c., erected by tenants.

At expiry of lease levels, &c., to be left open.

Restoration  
of land  
damaged by  
operations.

Removal of  
buildings,  
machinery,  
&c.

Landlord  
not to be  
entitled to  
take parts  
at a particular  
place.

Alternative  
clause as to  
basis of  
valuation.

Unsold  
minerals  
may remain  
for six  
months.

within six months after the termination of this lease to restore such land as may be injured by any of the several operations hereby authorised to an agricultural state, or to pay to the first party, or his foresaids, a sum at the rate of                      pounds sterling per imperial acre in lieu of such restoration; and likewise to restore all fences broken or injured by them to their former state, and to leave all fences erected by them for the protection of their pits, railways, and workings in a fencible and tenantable state of repair at the termination of this lease: AND the tenants shall be bound, within six months after the natural expiry or earlier termination of this lease, to remove the whole buildings, and other erections, engines, machinery, rails and rail-plates, sleepers, and all other apparatus and utensils connected with the working of the minerals hereby let, so far as belonging to them, unless the first party shall, prior to three months before such termination, intimate to the tenants his intention to take over all or any of the said buildings, machinery, and others, which the first party shall be entitled to do, at a valuation to be made by two men of skill, one to be chosen by each party, or by an oversman to be appointed by such valuers in case of their differing in opinion: AND PROVIDED ALWAYS that if the whole of such machinery and others is not taken, the said first party and his foresaids shall not be entitled to take parts thereof or other than the whole at any one pit or mine: AND the said valuers or oversman shall value the said machinery and others as for a going work, and for the estimated quantity of minerals, more or less, for the working of which the same may be available, or at a dismantling value, or partly the one and partly the other, as they shall consider fair and equitable in the circumstances: DECLARING that such minerals as may remain undisposed of at the termination of the lease shall be allowed to remain for six months, if necessary, to enable the tenants to sell and dispose of them within that period: AND they shall be entitled to use railways, and have all reasonable facilities for their removal; but under this condition, that said period of six months provided by this article shall only be allowed to the tenants, provided the purposes for which the same is permitted do not in any way unduly interfere with or impede the working of the minerals by the first party or by a new tenant: AND the tenants shall not be charged any rent during such period of six months, but they shall be liable for all injury of every kind caused by them during such occupation, including surface-damages:

FURTHER, in the event of the tenants becoming bankrupt or going into liquidation, or executing any deed of assignment or conveyance for behoof of creditors, or of their failure to pay the said fixed rents or balance of lordships within six months after the same shall respectively become due, then, and in any of these events, this lease shall, in the option of the first party, to be declared by a writing under his hand, or the hand of his factor or agent, be held as having terminated at the date of such writing, and the same shall thereupon come to an end and be void and null without the necessity of any declarator or process of law to be used for that effect: AND such nullity, in the event of its declaration in writing by the first party, or his factor or agent as aforesaid shall not thereafter be purgeable by payment, any law or custom to the contrary notwithstanding: RESERVING, nevertheless, full power to the first party to recover all arrears of rent or lordship due at the time or subsequently to become due to him, and to insist upon the immediate fulfilment of all the obligations undertaken by and incumbent on the tenants in respect of their possession as at the natural expiry of this lease: AND it shall be in the power of the first party if and when he shall have declared this lease to have terminated, as above provided for, to enter into possession of the premises, and to relet the said minerals, or otherwise dispose of the same as he shall think proper, in the same manner as if this lease had never been granted, and in such event, the first party shall have the like optional right to take the buildings, engines, machinery, roads, railroads, and apparatus and utensils connected with the working of the minerals hereby let, at a valuation, as hereinbefore provided on the natural expiry or earlier termination of this lease as aforesaid: AND DECLARING that the rights hereby conferred on the first party shall in no way interfere with or prejudice his legal hypothec in the premises: AND at the natural expiry or earlier termination of this lease, the tenants BIND and OBLIGE themselves to fit and remove, with their servants, workmen, and others in their employment, and whole property and effects, furth of and from the premises hereby let, and that without warning or process of removing to be used for that effect: BUT that always subject to the power hereinbefore conferred on them to remain on the ground for the purpose of removing buildings, machinery, minerals, and others: FURTHER, the obligations herein undertaken by or imposed upon the parties hereto, under the descriptions of the "first party" and the "tenants," shall be held to be

*Irritancy in the event of bankruptcy of lessees, &c.*

*Powers to landlord as to entering into possession.*

*Obligation on lessees to remove at last.*

*Stipulations of lease to devolve on representatives.*

applicable to and binding upon the successors of the said parties respectively, as proprietors and tenants of the minerals hereby let for the time, and all other persons who are or may be legally bound and representing the said parties respectively for fulfilment of the said obligations: AND in like manner the stipulations and obligations in favour of the said parties, under the same descriptions, shall be available to and may be enforced by the successors and representatives of the said parties respectively: AND both parties BIND and OBLIGE themselves and their respective foresaids to implement and fulfil to each other their respective parts of the premises, under a penalty of to be paid by the party failing to the party performing or willing to perform, over and above performance: AND they consent to registration hereof, and of the periodical accounts or returns before mentioned, and of any awards or decrees-arbitral, interim or final, to be pronounced as aforesaid, for preservation and execution.—IN WITNESS WHEREOF.

### 3. Lease of an Oil Work and Minerals.

IT IS CONTRACTED and AGREED between the parties following—viz., A (*designation*), heritable proprietor of the minerals hereinafter let, of the first part, and the Oil Company, Limited, incorporated under the Companies Acts, 1862 to 1900, of the second part, in manner following: THAT IS TO SAY, the said A has SET, and by these presents, in consideration of the rent, royalties or lordships, and other prestations, and with and under the conditions, restrictions, provisions, and declarations after mentioned, in tack and assedation LETS, to the said Oil Company, Limited, but excluding assignees, legal and conventional, and sub-tenants, and also liquidators and trustees or managers for creditors in any way or shape, unless with the consent of the first party in writing, ALL and SUNDRY the whole shale, coal, ironstone, fireclay, and other minerals of every kind, excepting freestone and other stone used for building purposes, in and under those parts of the estate of belonging to the said A, lying in the Parish of and County of , delineated and coloured on the plan annexed and signed as relative hereto, and that for the space of years from and after the term of , 19 , which is declared to be the commencement of this lease and the entry of the second

parties to the premises in virtue hereof, but with power to the tenants to relinquish and renounce this lease at the term of Breaks.

, 19 , and at the expiration of every year thereafter: DECLARING that should the tenants desire to avail themselves of the said breaks they shall give to the landlord

months' previous notice in writing of their intention so to do; and that before such relinquishment on the part of the tenant shall be allowed, all rents and royalties, or arrears of rents and royalties, shall have been paid to the proprietor, and all damages incurred by the tenants to any person or persons shall have been settled, and all other obligations incumbent on the tenants duly implemented and fulfilled; and which breaks in favour of the tenants shall be in full of any power they might claim to relinquish the lease on the ground of their being unable to work the minerals or any of them to profit:

WITH FULL POWER to the tenants, at their own proper charges and Power to work. expenses, but with and under the limitations, restrictions, and conditions after specified, to search for, work, win, raise, calcine, manu-

facture, and carry away and dispose of the whole minerals hereby let, and to char, calcine, manufacture, and burn the said shale, coal, ironstone, fireclay, and other minerals or any part thereof upon the ground, as fully and freely as the proprietor could do himself before granting these presents, and for these purposes, and under the limitations, restrictions, and conditions after specified, to sink pits, and drive levels for working the said minerals hereby let, to erect machinery for draining, working, winning, and bringing the said minerals to the surface, and for extracting and making oil from the said shale, and for manufacturing it and the other products of the said shale, and to make coal-hills, and hills for depositing and calcining the said ironstone and other minerals, to erect steam-engines, retorts, and all machinery, works, and apparatus necessary for the purposes above mentioned, to make roads, tramways, railways, reservoirs, and aqueducts above ground, but that only at such places and in such directions as may have been approved of by the proprietor or his factor for the time being in writing; AS ALSO, to Workmen's houses. build houses for the colliers, miners, workmen, and others employed in connection with the minerals hereby let, on suitable sites to be pointed out by the proprietor or his factor; and in general to do everything that may be necessary for carrying on the works and disposing of the minerals hereby let: PROVIDED ALWAYS that the

tenants shall be bound to conduct and carry on all their operations hereby authorised so as to do as little injury as possible to the adjoining lands, and to the houses, fences, drains, woods, and crops thereon: BUT DECLARING ALWAYS that these presents are granted and entered into by the first party only in so far as is consistent with any powers that may have been reserved by the landlord under any existing agricultural lease or leases of the lands the minerals in which are hereby let, or under any reservations implied by law in his favour under the said agricultural lease or leases: DECLARING ALWAYS, as it is hereby specially PROVIDED and DECLARED, that the powers hereinbefore granted to the tenants are subject to the following restrictions, limitations, and conditions, viz. :—(*First*), That the tenants are not save with the previous consent in writing of the said A or his factor, to erect retorts upon any part of the said A's lands except upon the portions of ground coloured \_\_\_\_\_ on the said plans, and that only on such sites in the said areas as shall previously have been approved of by the proprietor or his factor, and that the tenants shall, besides, adopt and continually use all the best available means for diminishing the smoke and smells arising from the operations connected with the retorts, and in the event of their using horizontal retorts they shall be bound, if required, to drench the spent shale arising therefrom with water before such shale is put out to the bank.(a) (*Second*), No new pits are to be opened, without the previous permission in writing of the proprietor or his factor, in the lands coloured \_\_\_\_\_ on the said plan or plans, and the working from under the said parts coloured \_\_\_\_\_ shall not be from the surface, but from an eye between \_\_\_\_\_ and \_\_\_\_\_ or from a pit situated at \_\_\_\_\_; (*Third*), The whole operations in the way of sinking, working, and depositing débris and rubbish shall be conducted by the tenants in such a manner as not to interfere with the operations at the \_\_\_\_\_ quarry or in any other quarry that may be opened on the said lands, and the débris shall be laid down in such places only as shall be pointed out by the landlord or his factor, and so far as possible shall be employed in filling up excavations at such quarry or quarries, if the same lie within moderate distance and there be convenient means

**Tenants  
not to inter-  
fere with  
a quarry.**

**Rubbish.**

(a) When danger is apprehended of pollution to a river, or of damage to trees, crop, &c., by pollution of the atmosphere special clauses should be inserted to guard against such.

of access between the places where the débris is produced and the said quarries: AND DECLARING that before any spoil-bank is begun, Surface soil. the soil shall be stripped and laid aside, and shall be laid upon the top of the said bank after it has been raised to its full height:

FURTHER, it is hereby expressly PROVIDED and DECLARED that the tenants shall not have power, unless with the previous consent in writing of the said A or his factor, to erect machinery or to form any hill, or calcine any ironstone, or to break the surface of the ground for any purpose (excepting always drains for conveying water), or to conduct any surface operations whatsoever within yards of any existing farm-house, church, steading or dwelling-house, or within any belts of plantation, or in any garden-ground, except that air-pits may be sunk at a distance of not less than yards from the nearest point of any farm-

house or church or steading or dwelling-house, but only at such place or places as shall have been previously approved of by the proprietor or his factor for the time being in writing: FURTHER, the tenants shall not have power or liberty to communicate to any of the neighbouring proprietors any of the levels belonging to the minerals hereby let, or any of them, or of using the said levels for the purpose of working any minerals other than those hereby let, nor to make any communication of the mines or workings to any neighbouring proprietor, or for other working than as aforesaid, unless with the special consent of the proprietor in writing, and under such conditions as he shall impose; AND the tenants shall be at liberty to make use of any farm-roads and service roads already made or to be made on the lands belonging to the said A, without any payment for the ground of such farm-roads or service roads as may be used by them, but they shall be obliged to pay a just proportion of the expense of keeping such farm-roads or service roads in repair, as such proportion shall, failing agreement, be settled by arbitration in manner after provided: WHICH LEASE, with Levels not to be communicated to neighbouring proprietors, &c. Rights of tenants to use farm-roads.

and under the conditions, provisions, limitations, restrictions, and declarations before and after written, the said A BINDS and OBLIGES himself and his heirs and successors to warrant at all hands: BUT DECLARING that he shall not be held to warrant the existence of the said minerals hereby let, or any of them, or of any minerals whatever within the said lands, or the correctness of any borings made in searching for minerals, or that any But existence, &c., of minerals not guaranteed. Warranted.

borings or operations to be performed by the tenants in searching for and working the same shall be successful, nor the correctness of any information which may have been communicated to the tenants regarding the minerals, the obligation and engagement hereby undertaken by the said A being only that in case any minerals (other than freestone and other building stones) shall be found within the said lands, the same are hereby let to the said

Oil Company Limited, and their foresaids in terms

**Rent.** of these presents: **FOR WHICH CAUSES AND ON THE OTHER PART,** the said Oil Company Limited **BIND** and **OBLIGE** themselves, and the shareholders thereof, and also the capital stock and profits of the said company, to **CONTENT** AND **PAY** to the said A, and his heirs, executors, or assignees, or to his or their factors, for his or their behoof, a fixed yearly rent of £                      sterling for the whole minerals and others hereby let during the currency of this lease, and that whether they shall work the minerals or not, which fixed rent is hereby declared to commence from the said term of                      , and shall be payable at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the term of                      , for the rent due for the period preceding that term, and the next term's payment at the term of                      following, for the half-year preceding said term, and so forth half-yearly, termly, and proportionally thereafter during the currency of this lease, with a fifth part more of each term's rent of liquidate penalty in case of failure, and interest at the rate of £5 per centum per annum on each half-yearly payment from the time the same falls due until payment; **OR, IN THE OPTION OF THE PROPRIETOR,**

**Lordships.** **TO PAY** to the said A or his foresaids the lordships or royalties after mentioned on the several minerals raised or obtained and disposed of from the mineral field hereby let—viz., for every ton (twenty-two and a half hundredweight) of shale obtained from the said mineral

**For shale.** field a royalty of £                      per ton; **AND** in the event of the crude oil manufactured from the shale so obtained rising in price to                      per gallon net at the works, on an average of any year, commencing at Martinmas                      , of £                      per every such ton obtained during such year, so long as the price shall continue at                      per gallon, or between                      and                      per gallon, and £                      extra of royalty on every such ton for every increase of                      per gallon net at the works on the price of the crude oil above

per gallon: BUT it is hereby PROVIDED and AGREED that the above-mentioned several increases of lordship or royalty on shale shall not apply to or be chargeable on the shale put out and sold at the pit mouth, and from which no crude oil is manufactured on the ground, but that the lordship or royalty on all shale so sold shall always be and remain at \_\_\_\_\_ per ton as aforesaid; a royalty of \_\_\_\_\_ for every ton of twenty-two Coal. and a half hundredweight of coal of every description obtained from the said mineral field; a royalty of \_\_\_\_\_ for every ton of Blackband ironstone. twenty-two and a half hundredweight of calcined blackband ironstone obtained from the said mineral field; and a royalty of \_\_\_\_\_ Fire-clay. for every ton of twenty-two and a half hundredweight of fire-clay obtained from the said mineral field; and for all other minerals and mineral substances hereby let, not specially mentioned above, such royalties as may be agreed on, or as may, failing agreement, be fixed by arbitration: BUT DECLARING that no lordship shall be chargeable upon any coal used by the engines necessary for the working of the minerals or the ventilation of the workings: AND with regard to the payment of fixed rent or royalties, Landlord to declare his option of fixed rents or royalties annually. it is hereby PROVIDED and AGREED that at the term of \_\_\_\_\_ in each year, commencing at \_\_\_\_\_, or as soon thereafter as the landlord shall have received and examined the necessary accounts or abstracts aftermentioned to enable him to come to a decision on the point, he shall declare his option of taking the fixed rent or the royalties for the year preceding the said term of \_\_\_\_\_, and in case he shall prefer to take the royalties, the half-yearly payments made at the preceding term of \_\_\_\_\_ shall be considered as payments to account, and the balance shall then be paid by the tenants, with interest at the rate of 5 per cent. per annum from the term of \_\_\_\_\_, and a fifth part more of liquidate penalty in case of failure: AND DECLARING ALSO that in case during any year of the lease the lordships on the minerals wrought shall fall short of the fixed rent exigible in the landlord's option, and which shall have been paid by the tenant in lieu of such lordships, the tenants shall be allowed to retain the amount of the deficiency out of any excess of the lordships beyond the fixed rent at the term of \_\_\_\_\_ thereafter being the expiration of the succeeding year, in so far as the lordships shall exceed the fixed rent in such immediately succeeding year but no longer; and for

Tenants to erect and maintain steelyards.

Tenants to keep books of output and sale.

Abstracts to be sent to landlord quarterly.

Landlord may place check-grievs.

the purpose of ascertaining correctly the quantity of minerals obtained from time to time by the tenants from the mineral field hereby let, and the amount of the royalties falling to be paid by them if royalties shall be demanded, the tenants shall fix and maintain at each pit, ingoing lye, or mine-mouth, a correct steelyard at which they shall cause to be weighed the said minerals as they are put out daily, and also such as shall be calcined or manufactured; and the said steelyards shall from time to time be adjusted by the tenants at their own expense and at the sight of the landlord, and shall be maintained in proper working order during the whole currency of the lease; and the tenants shall also cause regular books to be kept, in which shall be inserted daily, in a distinct manner, the output of each miner or company of miners or workmen, weighed daily as aforesaid, and on which lordship falls to be paid as aforesaid, and also an account of the sales and disposal of the said minerals whether in the raw or in a manufactured state, and a statement generally of the whole weight of the minerals and mineral substances obtained from the mineral field hereby let in the raw and manufactured states, and of the sales and rates of price (so far as this may affect the amount of royalties) and the consumption and disposal thereof; which books and accounts shall at all times be open and patent to the landlord and his factor, or others authorised by him; and the tenants shall also be bound to transmit quarterly to the landlord or to his factor abstracts of the said accounts, and extracts from the said books, showing the quantity of minerals raised and sold or otherwise disposed of as aforesaid during the quarter, and the prices thereof (so far as such prices affect the amount of the royalties), which abstracts and extracts shall be certified by the tenants or their manager, and shall, if required by the landlord, be verified by the tenants on solemn declaration: AND it is further PROVIDED and AGREED that it shall be competent to the landlord, whenever he shall think proper, to erect at his own expense any weighing machines he may think fit at the mouths of the pits and mines, or upon any railway used by the tenants for the conveyance of the minerals hereby let, but that so as not to interfere with the traffic of the tenants, upon which weighing machines the tenants shall allow the minerals to be weighed if required for the purpose of checking the weights and quantities of the said minerals, and also to place a check-grieve at

his own expense, at each pit or mine-mouth, in order to take an account of the produce of the said mineral field and of the disposal of the said produce, which account may be compared monthly, if required by the landlord, with the books and accounts kept by the tenants: AND it is hereby PROVIDED and AGREED that if there shall happen to be any discrepancy between the books and accounts kept and rendered by the tenants on the one hand, and the books and accounts kept by the said check-grieve on the other hand, the matter shall be referred to arbitration in manner after-mentioned, with the view of ascertaining the correct produce of the said mineral field, and other particulars in regard thereto, and when the correct produce has been so ascertained the same shall be held as regulating the amount of the lordships payable by the tenants, the landlord being nevertheless entitled to demand and receive payment of lordships upon the quantities of the respective minerals stated in the tenants' returns, which shall be held as payments to account of the year's lordships: AND it is hereby STIPULATED and AGREED that an account of the lordships or royalties due to the said A and his foresaids in terms hereof, made up from the tenants' books or accounts, or abstracts thereof, or from the accounts kept by the said check-grieve, and signed by the said A, or by his factor for the time, shall be sufficient to constitute the amount of such lordships or royalties that shall be due and payable at any time by the tenants, and shall without registration of such account or any other proceeding be held to be sufficient warrant for a charge and summary diligence or sequestration for the amount thereof against the tenants or their foresaids—the terms of payment being first come and by-gone: AND IN ADDITION to making payment of the foresaid fixed rent or lordships, as the case may be, the said Oil Com-pany Limited bind themselves and their foresaids, conjunctly and severally, to pay for all ground that may be occupied, used, or taken by them for any of the purposes before mentioned, and for all surface-damages and other damages, of whatever kind, whether already done by them in the course of boring and searching for the said minerals, or that may be hereafter occasioned by their workings and operations at any time during the currency of this lease, including the damages that may be occasioned by the construction of any tramways or railways, and the value of the ground required therefor, and stock, crops, and produce thereon, and of any trees that may be destroyed

Discrepancy  
in books to  
be settled by  
arbitration.

Accounts to  
warrant  
diligence

Tenants to  
pay for  
ground, &c.,  
occupied or  
damaged, at  
rates to be  
fixed by  
arbitration.

Tenants to  
take risk of  
fire damage.

Tenant to  
relieve land-  
lord of third  
parties'  
claims.

Land  
damages or  
compensa-  
tion, when  
payable.

Restoration  
of surface.

in the course of their construction, and all other damages done by them or under their directions, of whatever nature, whether to lands, houses, woods, trees, growing crops, barnyards, roads, fences, wells, water, and water-courses, or drains and others, and whether such damages shall be due to the said A or his foresaids, or to his or their tenants or feuars, or third parties, according as the value of such ground or the amount of such damages shall be fixed and ascertained by arbitration in manner after mentioned: AND DECLARING that the tenants under this lease shall be BOUND and OBLIGED to undertake the whole risk of and responsibility for any injury or damage that may be done or happen by or through fire caused by their operations and works in any way above or below ground, or to trees, plantations, houses, or other property, or that may be occasioned by sparks from any locomotives that may be used on any railways or tramways in their occupation or under their control; AND the tenants shall also be bound to free and relieve the said A and his foresaids of all claims which may be made by any neighbouring proprietors, tenants, or others, on account of any of the operations of the tenants under this lease, (a) or of their neglect of any of the stipulations, or their non-fulfilment or contravention of any of the obligations incumbent on them as tenants under these presents, or in any other manner of way; and of all loss and expense which may be incurred by the said A and his foresaids on account of or by reason of such claims; and which damages or compensation for land shall be payable yearly at the term of Martinmas in each year during the currency of this lease, in the case of such damages or compensation as shall be of a permanent nature; and in the case of temporary and other damages, immediately on the amount of the same being agreed on, or fixed by arbitration, with interest on such damages and compensation, at the rate of £5 per centum per annum from and after the time when the same became payable until payment: AND FURTHER, the said tenants shall be bound to restore, so far as practicable, any ground that may have been occupied for or damaged by the operations under this lease, when and so often as such ground shall be no longer required therefor, or to pay the sum requisite for restoring such ground to an arable state, or at least to the state in which it was prior to its being

(a) It is not unusual to take specific relief here from water and air pollution and consequent damage to neighbouring property. See footnote, p. 490, *supra*.

occupied or damaged by the said tenants or their foresaids, and where it shall be found impracticable, or practicable only at an expense greater than the amount of deterioration in value, to restore the ground occupied or damaged to its former state, the tenants shall be bound to pay for the deterioration, in case of the parties not agreeing thereon, such sum as shall be fixed by arbitration in manner after provided; AND the tenants shall also be bound to restore or pay for restoring all drains and fences broken or injured by them to their former state, so soon as such restoration can be made without interfering with their works, and that whether the ground or the drains and fences injured shall belong to the said A or to any other person: FURTHER, the tenants shall be bound to deliver to the landlord or his factor a copy of the journals of all bores made or to be made by them on the mineral field hereby let, as furnished to them by their borers, which copy shall be verified by the tenants, and the sites of the bores shall also be marked upon a plan of the ground, to be furnished by the landlord for the purpose, with as great correctness as may be in their power: AND WITHOUT PREJUDICE TO THE PROVISIONS, DECLARATIONS, AND OBLIGATIONS ABOVE WRITTEN, the following articles have been specially agreed on between the parties, and are hereby declared to form conditions under which the present lease is entered into, viz.:—*First*, The minerals hereby let shall be wrought in the most regular, approved, and systematic manner as to fall, ventilation, and drainage: *DECLARING* that where practicable all the mineral seams shall be wrought by long-wall or other workmanlike manner of complete excavation; and where any of the said minerals are worked open-cast, the soil shall be carefully lifted and deposited apart from the deeper tiring, and when the open-cast workings are exhausted, they shall be filled up and levelled, and the soil previously deposited apart as aforesaid shall be replaced, so as to render the surface as fit for agricultural purposes as it previously was, otherwise damages shall be paid in manner before provided: *Second*, The levels, walls, faces, headings, and air-courses shall be kept clear and patent during the working out of any seam, and until the working of it shall be abandoned, which abandoning shall not take place so long as it is workable to a profit, or until a readier and more economical means of winning the unexhausted part of the minerals is adopted: AND the tenants further BIND and OBLIGE themselves to do everything

Restoration  
of fences.

Tenants to  
furnish  
journals  
and sites  
of bores.

Special  
conditions  
of lease.

1. Method  
of working.

Open-cast  
workings.

2. Levels,  
&c., to be  
kept clear.

which may be necessary for carrying on the working of the minerals hereby let on as extensive a scale as circumstances will admit of, and also to furnish and erect the whole requisite buildings, machinery, and utensils necessary for so working and manufacturing the said minerals, and to conduct the workings so as to take out as much of the minerals as is consistent with the existing and future interests of the mineral field: AND it is hereby PROVIDED that the workings shall on no side be carried within yards of any march or any boundary between the lands containing the minerals hereby let and adjoining lands, without the written permission of the said A or his foresaids, and that at such places only as may be agreed on: IT IS FURTHER PROVIDED that the workings of the minerals hereby let shall not be carried nearer than yards of any existing farm-steadings or existing buildings upon the lands, or under any road, railway, or running stream, nor within yards of the edge thereof, excepting for the purpose of making communication across such roads, railways, or streams to the minerals on the other side thereof, and which communications shall be made only at such places as may be agreed to by the landlord, and shall be wrought narrow, not more than feet in breadth, and not nearer each other than yards:

**Barriers.** AND in regard to the minerals under any public railway, it is hereby DECLARED that the tenants shall have power to work the same only in so far as the landlord can do so, and as is permitted by the provisions of the Railway Acts: AND it is hereby specially PROVIDED and DECLARED that the tenants shall alone be responsible for any loss or damage that may arise from encroachments on adjoining lands or other property: *Third*, The tenants shall be bound to make out regular yearly surveys and plans of their whole workings, and that at their own expense, showing at the end of each year the excavations which have been made during the preceding year, all dykes and ditches being carefully marked and delineated thereon; which surveys and plans shall be exhibited for a reasonable time, to the proprietor or any person on his behalf, annually or oftener if required, and at the end of the lease these plans shall be the property of the landlord, and shall be delivered over to him: *Fourth*, The tenants shall be bound to keep the whole going workings properly ventilated, and in a regular upredd and workable state during the lease, and to leave them in the like state at their

**Distances to be kept from buildings, &c.**

**Minerals under railways.**

**3. Plans.**

**4. Ventilation of workings.**

removal, except in so far as they shall be levelled and filled up from time to time with consent of the landlord as herein provided:

DECLARING that the landlord shall be at full liberty to inspect the workings at all reasonable times by himself, or any person or persons appointed by him, on giving three days' previous notice to the tenants of his desire and intention to make such inspection; and he or such person or persons shall also have free access to all manufactories and works erected or used by the tenants in connection with the said minerals; and he or they shall be entitled to require, upon giving the said notice, the attendance and services of an overseer and two of the tenants' workmen to accompany them on such inspections, the landlord being bound to pay such overseer and workmen the wages for the time during which they are occupied in such inspections at the usual rate per hour at which they are paid at the time: AND it is hereby PROVIDED and AGREED THAT, in the event of any difference of opinion arising between the landlord and the tenants as to the proper mode of conducting the workings under this lease, that such difference shall be, and the same is hereby, referred to the determination of Inspection by landlord of workings and manufactories.

Arbitration clause as to workings.  
 , whom failing of 5. Restoration of ground to arable state.  
 , whom failing of any mining engineer to be agreed upon by the parties, and the workings shall be conducted in accordance with the award and directions of such referee: *Fifth.*  
 The tenants shall be BOUND and OBLIGED at the natural expiry or earlier termination of this lease, at their own expense, to restore as far as practicable to an arable condition, where the ground was arable at their entry, or otherwise to the condition in which it then was, all ground occupied or that may be occupied by pits, roads, hills, tramways, railways, or in any other manner of way in the course of working, winning, manufacturing, or carrying away the said minerals and others hereby let, or any of them, in so far as such restoration shall not have previously been made (unless as regards any tramways, roads, or railways, which may be taken over at valuation as after mentioned), or else to pay for the deterioration of the ground as before provided for; and they shall also be bound to fill up all pits, when the same are no longer of use, in a proper manner: BUT it is hereby PROVIDED and DECLARED that the tenants shall not be entitled to fill up any pits that in their opinion may no longer be of use to them without the written permission of the landlord or his factor; and in case the tenants shall desire to fill up any of the said

Unused pits to be filled up.

pits, and the landlord shall refuse to allow this to be done, then the tenants shall thereafter be relieved of the obligation hereby imposed on them to fill up such pits, all previous damages occasioned thereby being settled by the tenants: AND it is also hereby PROVIDED and DECLARED that all disused pits not filled up as aforesaid, shall be kept and left open by the tenants during the lease clear to the mineral seams, and that the tenants shall be bound, at their own expense, to surround the same at the surface with a stone and lime wall of at least six feet in height at each pit mouth, and to keep the said walls in proper repair during the currency of the lease, and to leave them in that state at their removal, the ground which has been used around such pits being, on their ceasing to be used, restored as far as possible to the condition in which it formerly was, or compensation for deterioration paid in respect thereof, as before provided for: *Sixth*, The tenants shall be BOUND and OBLIGED to maintain all tramways, roads, and railways that may be constructed by them with the landlord's consent, in proper order and repair, and, if required, to keep the same properly fenced, all at their own expense, so long as they continue to use the same, and they shall be bound to leave the said tramways, roads, and railways in like good condition at their removal, if the landlord shall require them so to do, and in that case the same shall be purchased and taken over by the landlord at a valuation to be fixed by arbitration in manner hereinafter provided, and in the event of the landlord not requiring the same to be left, the tenants shall be entitled to remove the materials, and shall be bound to restore the ground to its former condition, as before provided for; BUT in the event of the rails or any other materials used in the construction of any railway being the property of any Railway Company, the same shall be made over to the landlord, subject to the rights of the said Railway Company, and all rails belonging to the said Railway Company shall not be subject to any right of hypothec or retention by the landlord: *Seventh*, The tenants shall be BOUND and OBLIGED to keep all going pits, hills, mines, and others made or used by them securely fenced with proper fences and gates, and also to keep all roads, tramways, and railways made or used by them securely fenced and having gates and stiles on the footpaths, and they shall be bound to pay whatever damage may be sustained by the agricultural tenants to others in consequence of the said pits, hills, mines, or roads, tramways, rail-

Unused pits  
not filled to  
be walled  
round.

6. Tenants  
to maintain  
roads, &c.

If rails, &c.,  
belong to  
a railway  
company.

7. Going  
pits, &c., to  
be fenced.

ways, or others not being fenced and secured: *Eighth*, It is hereby DECLARED and AGREED TO by the tenants that the whole houses, steam-engines, retorts, condensers, tanks, railways, or tramways, and in general the whole fixed machinery and apparatus belonging to them, and that may be erected or constructed by them upon the mineral field hereby let, shall immediately upon the natural or earlier termination of this lease become the property of the landlord, but subject always to this condition, that at the expiry of the lease, either at its natural term of , or at any of the tenants' breaks before mentioned, or other termination as the case may be, the landlord shall either pay to the tenants the value of the said fixed machinery, apparatus, and property, or of such part thereof as he may not choose to allow the tenants to remove as after-mentioned, as such value shall be ascertained by arbitration in manner after provided, or in the landlord's option, in lieu of paying such value he may allow the tenant to remove the whole or any part of such machinery and others as he may not choose to pay the value of; and in the event of the lease being brought to an end by the bankruptcy of the tenants, or by the occurrence of any other event whereby the landlord may declare the lease to be at an end, the landlord shall either allow the tenants or those in their right to remove the said machinery and others, and restore the ground, or in his option he shall pay to the tenants or those in their right, the value of the said machinery and others, as such value shall be ascertained by arbitration in manner after provided, declaring that the option of the landlord may be exercised by allowing part to be removed and by paying the value of the remainder as he chooses: AND it is hereby DECLARED that where the landlord shall pay the value of such machinery and others, or any part thereof, in all the cases above provided for, he shall be entitled to set off against the price thereof all rents and arrears of rents, and interest thereof, and all surface damages, that may be due to him at the time, also all advances, if any, that may have been made by him or on his behalf to the tenants, and likewise all damages and expenses that may be incurred by the landlord through the non-implement by the tenants of the provisions of the lease, should the same be brought to a termination by their bankruptcy, or otherwise than at its natural ish, or by any of the said breaks being taken advantage of: FURTHER, at the end of

8. At ish buildings, &c., to become landlord's property.

But landlord to pay therefor value fixed by arbiters, &c.

Landlord may set off value of machinery against rent, &c.

At end of  
lease land-  
lord may  
take any  
moveable  
plant.

Valuations  
to be not as  
a going  
work.

9. Irritancy.

But not to  
infer dis-  
charge of  
rents, &c.

10. Trespass  
by workmen.

the lease it shall be in the option of the landlord to take over the utensils and other moveable plant that may be used in connection with the works, or such part thereof as he may choose, on payment of the value thereof, as the same shall be fixed by arbitration : AND it is DECLARED and AGREED TO that all valuations under this lease, made for the purpose of ascertaining a sum to be paid by the landlord, are to be made on the principle of the property and articles being to be removed from the ground, and not as if they were to be used as a going work ; and in the event of the landlord not taking over the said utensils and other moveable plant, the tenants shall be entitled to remove them, or such part thereof as the landlord may not choose to take, and the tenants shall be bound to leave all machinery, utensils, and plant, whether fixed or moveable, as well as the houses and other buildings erected by them in a good and sufficient state of repair at their removal : *Ninth*, It is hereby DECLARED and AGREED TO by the tenants that if at any time during the lease the rents or royalties payable at any two successive terms shall be due and unpaid, and if payment of the same shall be demanded in writing by the said A or his foresaids, or his or their factor, from the said tenants or their foresaids, and the said rent shall not be wholly paid within one calendar month after the date of such demand, or if at any time during the lease the said tenants shall become bankrupt, or if a liquidator shall be appointed under the Companies Acts, or otherwise, then in the option of the said A or his foresaids the present lease shall become *ipso facto* void and null so far as regards the tenants' rights under the same, and the said lessees shall not have power thereafter to purge the irritancy by payment of the arrears or otherwise, unless with the consent of the landlord or his foresaids in writing, and the landlord or his foresaids shall thereafter be entitled to enter upon the possession of the subjects hereby let in the same manner as if this lease had come to its natural termination : BUT DECLARING that the fact of such irritancy having been incurred, and of the landlord having entered into possession of the said subjects, shall not be held to infer a discharge of any rents or royalties due by the tenants at the date thereof, or of any of their obligations under these presents, which may not have been implemented by them : *Tenth*, The tenants BIND and OBLIGE themselves and their foresaids to make such arrangements, so far as they reasonably can, with their miners and work-

men as shall compel them to keep regular recognised roads and to avoid trespassing in pursuit of game or otherwise on any part of the said A's lands and estate; they shall also, so far as they reasonably can, prevent their said workmen and others from keeping dogs, and shall at once dismiss any man who may be found to have been poaching or destroying game, hares, or rabbits: *Eleventh*, It is hereby PROVIDED and DECLARED with regard to all matters mentioned in this lease as being to be submitted or referred to arbitration, or to the decision of third parties, and with regard generally to any disputes or questions that may arise between the parties with reference to the import of this tack, and the conditions and obligations herein prescribed, and any matters requiring to be adjusted between the parties hereto, excepting matters connected with the working of the mineral field, as to which a special reference is hereinbefore made, that every such dispute and all such questions and matters shall be, and the same are hereby, referred to an arbiter to be agreed on by the parties, or in the event of their not agreeing upon one arbiter, then two arbiters, one to be named by each party, or to an oversman to be appointed by such arbiters, and whom they shall appoint before entering on the matter referred to them, and in the event of the parties not agreeing on or naming an arbiter or arbiters, or in case of the arbiters failing to appoint an oversman, as the case may be, then to an arbiter to be appointed by the Judge Ordinary on the application of either party; and the decision to be pronounced by the said arbiter or arbiters, or oversman, shall be final and binding on both parties; and the said arbiter or arbiters, or oversman, shall have power to decide all questions of expenses connected with any such reference: *Twelfth*, The tenants BIND and OBLIGE themselves and their foresaids to flit and remove themselves and their servants, workmen, dependents, and effects, furth of and from the subjects hereby let at the expiry of this tack, without any warning or process of removing requiring to be executed for that effect, the same being hereby dispensed with: DECLARING, nevertheless, that if at the termination of this lease any minerals that may have been raised under the lease shall be on hand undisposed of, the same shall be allowed to remain on the premises for three months if necessary, to enable the tenants to dispose of the same, and at the expiry of the said period they shall, so far as not removed from the premises, become the property of the landlord without any payment therefor:

11. Arbitration clause.

Removal.

Tenants to have three months to remove minerals undisposed of.

**Implement clause.** and *Lastly*, The parties hereto BIND and OBLIGE themselves and their respective foresaids to implement and fulfil their several parts of the premises to each other under the penalty of £            sterling, to be paid by the party failing to the party performing or willing to perform, and that over and above performance: AND both parties consent to registration hereof, and of any awards or decrees-arbitral interim or final to be pronounced by the arbiters in any arbitration or reference under this lease for preservation and execution.—IN WITNESS WHEREOF, &c.

#### 4. Lease of Limestone.

**Landlord and tenant.** IT is CONTRACTED and AGREED between the parties following, *videlicet*, A (*designation*) on the one part and B (*designation*) on the other part in manner following:—THAT IS TO SAY, the said A hereby sets, and in tack and assedation lets to the said B and his heirs, but expressly excluding assignees, legal or conventional, and sub-tenants of every description, also expressly excluding creditors and trustees or managers for behoof of creditors in any way, unless with the consent in writing of the proprietor (the said A and his successors being hereinafter designated "the proprietor," and the said B or the person in right of this lease for the time being hereinafter

**Subjects let.** designated "the tenant") ALL AND WHOLE the limestone and coal lying in and under that part of the first party's estate of delineated and coloured            on the plan or sketch annexed and signed as relative hereto, lying in the parish of            and county of           , declaring that the said plan is not to be held as absolutely accurate, but as setting forth generally the boundaries of the mineral field hereby let; and that for the space of

**Period of let.** years from and after the term of           : BUT declaring that it shall be in the option of the tenant to put an end to this lease at the term of            and at the expiry of every            year thereafter upon giving six months previous written notice to the proprietor of his intention so to do: DECLARING that the breaks hereinbefore stipulated shall supersede any right the tenant might have claimed to abandon this lease on the ground of the minerals hereby let being unworkable to profit, or on any other legal ground or pretext whatever, all rights of which nature he hereby expressly

renounces and discharges: WITH power to the tenant to sink pits, drive levels, make roads, railways, and watercourses, and to build and erect in and upon the land the limestone and coal in which are hereby let, all houses, kilns, works and machinery which shall be necessary for working, storing, manufacturing or carrying away and disposing of the said limestone and coal, and with powers to the tenant to use any kilns, roads, and watercourses already made on the said lands, the limestone and coal in which are hereby let for the purpose of working, manufacturing, or carrying away the said limestone and coal, these operations being conducted so as to do as little injury to the ground as possible, and subject to the conditions and provisions after-written: Reserving to the proprietor the whole limestone and coal under and alongside of public roads and railways, except in so far as the proprietor may legally work the same; As ALSO the whole ironstone, fire-clay, mines, metals, stone, and minerals of every description within the bounds of the said lands excepting the limestone and coal hereby let, with full power and liberty by his tacksmen or servants, or others under his authority, to search for, work, win, and carry away the metals, minerals, and others hereby reserved, and to sink pits, open quarries, make roads, railways, aqueducts, and drains, erect machinery and houses, and, in general, to do everything necessary for carrying on the said operations, so far as not inconsistent with the exclusive right of working the limestone and coal hereby granted; which lease with and under the reservations, conditions, declarations, and exceptions, before and after specified, the said A BINDS and OBLIGES himself to warrant at all hands: DECLARING always that no warranty is given as to the existence or quality of the limestone or coal in the said lands, or the correctness of any information which may have been communicated to the tenant regarding the said limestone or coal, the obligation and engagement hereby undertaken by the proprietor, being only that any limestone or coal found in the said lands are hereby let to the tenant on the terms and under the conditions before and after written: FOR WHICH CAUSES AND ON THE OTHER PART the said B BINDS and OBLIGES himself and his heirs, executors, and representatives whomsoever to make payment to the said A or his successors, or to his or to their factor or agent for the time, the yearly rents or lordships after-mentioned, *videlicet*; the sum of pounds sterling of fixed yearly

Reservation of minerals under public roads.

Reservation of other minerals.

Warranted.

Rents.

rent for the subjects hereby let, which rent shall be payable whether the said tenant shall work the minerals or not; or in the option of the proprietor, and in lieu of the said fixed yearly rent of pounds sterling the lordships after-specified, *videlicet*, for every quantity of twenty hundredweights of burnt lime or lime shells produced from the subjects hereby let (other than such lime as may be supplied to the proprietor at wholesale price, in terms of the provision hereinafter written) a lordship of                      pence; for every quantity of twenty hundredweights of limestone removed from the subjects hereby let in the raw state a lordship of                      pence; and for every quantity of twenty hundredweights of coal (without separation or distinction between coal and dross), which may be sold or removed from the subjects hereby let (other than coal which may be supplied to the proprietor in terms of the provision hereinafter written, and all coal which may be used by the tenant in connection with the working or burning of the minerals hereby let) a lordship of                      pence; and which fixed yearly rent or lordships shall be payable at two terms in the year, Whitsunday and Martinmas (the fixed yearly rent by equal portions), beginning the first term's payment at                      , and the next at                      following, and so forth half-yearly and termly during the currency of this lease, with a fifth part more of the said rent and lordships respectively of penalty in case of failure in the punctual payment thereof, and interest at the rate of 5 per cent. per annum from the respective terms of payment thereof during the not payment: AND in order to ascertain the amount of the lordships payable as before stipulated, the tenant BINDS and OBLIGES himself to keep regular books containing a distinct daily account of the output, sale, disposal, or consumption of all the limestone, lime shells, and coal, worked, raised, or put out, or manufactured, or sold, in virtue of this lease, which book shall be at all times open to the inspection of the proprietor or his factor, or any other person or persons he may appoint, and the tenant shall furnish to the proprietor or his factor regularly at the terms of Whitsunday and Martinmas, in each year during this lease, an accurate and particular statement of the limestone and coal worked, of the lime burned and disposed of, and of the coal sold or removed in virtue of this lease during the half-year immediately preceding, along with a statement showing the rents or lordships payable under this lease for such half-year, all

Lordships.

Tenant to  
keep books

Tenant to  
furnish  
returns.

**Power to  
make up  
shorts.**

**Proprietor  
to supply  
tenant with  
timber.**

**Tenant to supply proprietor with lime and coal.**

### Ditches.

**Tenant to  
relieve pro-  
prietor of  
all claims  
for damages.**

done in any way to the surface of the ground, or any crops thereon, in consequence of the operations under this lease, and generally to free and relieve the proprietor of all claims which may arise through the working of the coal and limestone hereby let, and to pay a fair yearly rent or compensation (to be ascertained, failing agreement, by arbitration) for any ground occupied in working the said limestone and coal, or by buildings or roads, or for any other purposes connected therewith, and that at the term of \_\_\_\_\_, yearly, until the surface of the said ground shall be restored, or paid for in lieu of restoration, in manner after-mentioned: AND the tenant shall be bound, so far as practicable, to restore all ground broken or occupied by him under this lease, to the condition in which it was before it was so broken or occupied, to the satisfaction of the proprietor, at the expiry or sooner termination of this lease, or so soon as the same is no longer required for the use of his works; or in the tenant's option to pay to the proprietor for such ground as may be broken or damaged as aforesaid, and may not be restored as hereinbefore provided, at the rate of \_\_\_\_\_ pounds per imperial acre, and which ground so to be paid for shall remain the property of the proprietor; AS ALSO to restore, or pay for restoring, all fences broken or injured by the tenant or his workmen, to their former state as soon as this can be done without interfering with the works; AS ALSO, to enclose all roads, railways, tramways, open casts and ponds, and all ground occupied, with a sufficient fence four feet in height, and also to enclose all air-pits, and all pits which are no longer necessary for the working of the said limestone and coal, with a sufficient fence five feet in height, to the satisfaction of the proprietor, and if required by the proprietor, but not otherwise, to fill up all pits which may be no longer in use: DECLARING that the tenant shall not be entitled to fill up such pits without the consent of the proprietor in writing, but no compensation or damages for non-restoration shall be payable by the tenant in respect of any pits which the proprietor may require to be left open: AND FURTHER, the tenant BINDS and OBLIGES himself to work the said limestone and coal in a fair, regular, and systematic manner, and to leave sufficient pillars wherever necessary throughout the working to the satisfaction of the proprietor's engineer for the time, declaring that where stoop and room working is adopted, the stoops so far as made by the tenant in virtue of this lease shall be of a size to be approved of by such engineer, and particularly and

Restoration  
of ground.

Fencing.

Filling up  
of pits.

Method of  
working.

without prejudice to the said generality, the tenant shall be bound to make and carry forward the dip head levels and other necessary water levels of going mines in a true watercourse direction, and always to keep and maintain the same, and the wall faces, and roads to the wall faces, clear and open, and also to make and maintain air-courses, and to leave the whole pits and mines in operation at the time, and the roads, water levels, air-courses, and all other workings in the same regular state and condition, and free, clear, and properly ventilated, open, and passable, at the expiry or sooner termination of this lease, and so that the proprietor or any incoming tenant may freely enter to and carry on the same without delay or hindrance of any sort: AND it is hereby provided and declared that regular plans Plans. of the workings shall be made out and carried forward by the tenant and exhibited to the proprietor at the settlement of the rents or lordships for each half-year, or at any other time he may call for them, the proprietor or his factor or others authorised by him being entitled to take copies and check the same at pleasure: AND all Journals of bores. journals of bores made by the tenant with a view to the exploration or working of the limestone and coal hereby let shall become the property of the proprietor, and be delivered to him at the expiry or sooner termination of this lease: AND the proprietor shall at all Inspection. times during the currency of this lease have full power, by such person or persons as he shall think fit, to enter into, inspect, and examine the whole workings and operations of the tenant, both above and below ground, and to take measurements and make plans thereof for his own use: AND it is further stipulated and agreed that Irritancy in case of bankruptcy, &c. in the event of the bankruptcy or declared insolvency of the tenant, or if at any time during the currency of this lease there shall be one half-year's rent or lordship unpaid when the next half-year's rent or lordship falls due, then, and in any of these cases, it shall be in the power of the proprietor, if he shall think fit, to declare this lease to have become null and void, and the same shall thereupon come to an end without any process of law to that effect, without prejudice nevertheless to the proprietor's rights under this lease in regard to the tenant's obligations during the period of his possession, and to the condition in which the subjects are hereby required to be left at the expiry or sooner termination of this lease: AND the Removal. tenant BINDS and OBLIGES himself and his foresaids to flit and remove themselves and their families, servants, workmen, and goods

Unsold  
minerals  
may remain  
for six  
months.

Power to  
landlord  
to acquire  
machinery,  
&c.

and effects furth of and from the whole subjects hereby let at the expiry or sooner termination of this lease whenever that shall take place: **DECLARING**, nevertheless, that such limestone and coal as may remain on the subjects unsold at the expiry or sooner termination of this lease shall be allowed to remain six months if necessary to be sold and disposed of within that period by the tenant: **AND** further declaring that at the expiry or sooner termination of this lease the proprietor shall have right if he thinks proper to take the whole engines, machinery, apparatus, rails, and utensils belonging to the tenant and connected with the working of the said limestone and coal hereby let either above or below ground at a fair valuation to be made by two men of skill mutually chosen by the parties as arbiters, or by an oversman to be named by them in case the arbiters shall differ in opinion: **AND** the tenant shall be bound six months before the expiry or sooner termination of this lease to offer in writing to the proprietor the said engines, machinery, apparatus, rails, and utensils, and should the proprietor determine to accept of the said offer, he shall be bound to intimate his acceptance thereof within three months after receiving the same and shall pay the value of the said engines, machinery, and apparatus to be ascertained as aforesaid within six months after the expiry or sooner termination of the lease, and before taking possession of the same, the proprietor being entitled to take either the engines, machinery, and apparatus at all the pits or mines, or to take the engines, machinery, or apparatus at any one pit or mine, without being bound to take those at any other pit or mine, but he shall not be entitled to take a part only of the said articles at any one pit or mine, but shall be bound to take the whole utensils, machinery, and other fittings at that pit or mine which may be in use and in working condition at the time, and the value thereof shall be estimated by the said arbiters or oversman, where the pit or mine is a working pit or mine at the time, according to their value at the time to a going work: **BUT** in case and so far as the proprietor shall not accept the said offer to be made to him as aforesaid, the tenant shall be entitled, provided all rents, lordships, and other obligations due by him to the proprietor in virtue of this lease shall have been previously paid and discharged, but in no other event, to remove the said engines, machinery, and apparatus, and shall be allowed six months after the termination of the lease for removing, dismantling, and carrying

away the same, provided he does not interfere with or impede the working of the said limestone and coal by the proprietor, or by a new tenant, and that he shall pay rent or compensation for the ground occupied by him during the whole or any portion of the said period of six months: AND both parties BIND and OBLIGE themselves and their foresaids to implement and fulfil their respective parts of the promises to each other under the penalty of £ sterling, to be paid by the party failing to the party observing or willing to observe his part thereof over and above performance: AND they consent to registration hereof for preservation and execution.—IN WITNESS WHEREOF. Implement.

### 5. Lease of a Clayfield.

IT is CONTRACTED and AGREED between the parties following, Parties  
 viz.:—A (*designation*), heritable proprietor of the subjects after-mentioned, hereinafter referred to as the first party on the one part, and B (*designation*), hereinafter referred to as the second party on the other part, in manner following: THAT IS TO SAY, the said A, IN CONSIDERATION of the tack, duty, and other prestations, and with and under the conditions, restrictions, provisions, and declarations after-mentioned, hereby SETS and in tack and assedation LETS to the said B and his heirs, excluding heirs portioners (the eldest heir female Destination. always succeeding without division), and also excluding assignees, legal and conventional as well as voluntary, and also sub-tenants and all creditors and trustees or managers for creditors without the written consent of the first party (declaring that in the event of any sub-let or assignation being agreed to by the first party, the second party shall nevertheless remain bound for the rents and all the other prestations and conditions of the lease incumbent on the tenant): ALL AND WHOLE, the ground on the estate of Y, on Subjects let which the brickwork of X is situated, and the ground surrounding the same all as delineated and coloured on the plan annexed and signed as relative hereto, with right to take surface clay from the ground delineated and coloured on said plan, and blaes from the various heaps at present lying on the lands of for the purpose of making the same into building bricks at said brickwork, which brick-



instead of the said fixed rent, a lordship of                      on every 1000 bricks made at said brickwork until the said heaps of blaes at present on the said lands of                      are exhausted, and a lordship of                      on every 1000 bricks made at said brickwork after the said heaps of blaes are exhausted, and it becomes necessary for the second party to find blaes elsewhere to mix with said clay: AND which fixed rent of £                      or optional lordships above mentioned shall be payable half-yearly at the terms of Whitsunday and Martinmas, beginning the first term's payment at the term of                      , 19                      , for the half-year to that date, and the next term's payment at the term of                      following, and so forth half-yearly and termly thereafter during the currency of this lease, with a fifth part more of each term's payment of said fixed rent or optional lordships of penalty in case of failure in the punctual payment thereof, and the interest of each termly payment of rent or lordship at the rate of 5 per cent. per annum from the time the same falls due during the not-payment thereof: THE second party shall also be bound to pay a just share of the expense of keeping in good repair any of the farm or estate roads which may be used by them: AND the second party shall cause regular books to be kept in which shall be inserted daily in a distinct manner an account of the output of bricks from said brickwork, and also an account of the sales and disposal of said bricks, which books and accounts shall at all times be open and patent to the proprietor or his factor or agent for the time, and the second party shall also be bound to transmit quarterly to the first party or his foresaid's abstracts of said accounts which shall be certified by the second party or his manager, and shall, if required by the first party, be verified by the second party on solemn declaration: THE second party shall always burn the bricks in close kilns of the most approved pattern so as to prevent, as far as possible, any nuisance from smoke, and they shall work the said clay in a regular and proper manner, and shall carry the whole workings before them according to the line and levels shown on said plan or as may be fixed and pointed out by the first party's engineer: DECLARING that not less than 500 cubic yards of clay shall be burned annually, and they shall also remove, and so far as suitable for brickmaking, use up the said heaps of blaes as expeditiously as possible, leaving the ground at present occupied clear and red, so that it may, if

Repair of  
roads.

Tenant to  
keep books.

Tenant to  
send  
quarterly  
returns.

Method of  
working.

Inspection  
of tenant's  
books by  
proprietor.

desired, be again brought into an arable state ; and at the end of each half-year the first party's engineer shall make an inspection of the second party's books during the preceding six months, and shall fix the amount of the lordship payable by him for said period, which inspection shall be made at the mutual expense of the first and second parties : THE second party shall not be entitled to bring blaes or other substances on to the said lands to be mixed with said clay until the heaps of blaes on the said lands of                      are exhausted as aforesaid, and

Fencing.

as soon as said heaps of blaes are exhausted the second party shall be bound to remove all railways, tramways, roads, or other works made or used by them, and to restore the ground as after-mentioned : THE second party shall be bound to fence in the said brickwork and ground delineated and coloured                      on said plan, and also their workings in the ground delineated and coloured                      on said plan, and any railways, tramways, roads, or other works erected by them with strong and sufficient fences, and shall constantly keep the whole of said fences in a proper and sufficient state of repair during the lease, and leave them in such state of repair at the expiry or sooner termination

Payment of  
damages  
caused by  
tenant's  
operations.

thereof, all at their own expense : THE second party shall pay to the first party, and his farm tenants or others having right to claim the same respectively, all damages of whatever nature which may be due to or occasioned by the operations of the second party to the surface of the ground, and to stock, crops, and pasture thereon and produce thereof, and to woods, plantations, roads, accesses, wells, watering-places, walls, and fences thereon, and to any buildings now upon the lands or that may be erected thereon, and to free, relieve, and indemnify the first party of all claims for any such damages or for any damages on any account in respect of or in connection with any of the operations under this lease at the instance of any

Rent for  
ground  
occupied.

person or persons whatsoever : AS ALSO to pay to the first party or to his farm tenants where such farm tenants are the parties entitled to compensation, a fair yearly rent or compensation for all ground taken, broken, or appropriated by the second party for the purposes of this lease, and that so long as the same shall be occupied

Restoration  
of ground.

under this lease or left unrestored as after-mentioned : FURTHER, the second party shall be bound to restore the ground delineated and coloured                      on said plan to an agricultural state regularly as excavated, and to hand the same back to the first party in a condition fit for cultivation as soon as possible, declaring, however,

that the first party shall not be bound to accept of any such restored ground until he is satisfied with its condition, nor shall he be bound to accept the same in small batches, but only when the area is of sufficient extent to be useful for agricultural purposes: AND at the expiry or sooner termination of this lease, or at least within two months thereafter, the second party shall restore the whole ground taken, broken, or appropriated by him, not already paid for by him, to an agricultural state fit for cultivation, if so advised by the first party, or pay such compensation in lieu of restoration as shall be fixed by the arbiter after-mentioned: AND it is hereby PROVIDED and DECLARED that in case Irritancy. the second party or his foresaids shall become bankrupt, or shall execute a trust-deed for behoof of creditors, or shall possess the premises merely nominally and account to others for the produce thereof, then it shall be in the power of the first party at once to put an end to this lease by intimation in writing to the second party of his desire that the lease should come to an end, and to resume possession of the subjects hereby let without any declarator or other process of law to that effect: AND it is hereby PROVIDED and Arbitration. DECLARED with regard to all claims under this lease on the part of the proprietor for damages, or for rent of ground occupied or damaged, or for the restoration of ground, roads, fences, or others damaged by the tenant's operations, the same shall, failing agreement between the parties, be referred, and the same and generally all other matters, disputes, and differences which may arise in the working out of the lease between the parties hereto are hereby referred to the decision of \_\_\_\_\_, whom failing \_\_\_\_\_, whose decision shall be final and binding upon both parties and their foresaids, and who shall be entitled to deal with the expenses of the necessary proceedings connected with all references or submissions under these presents, as he may deem proper: AND the Removal second party BIND and OBLIGES himself and his foresaids to flit and remove themselves, their servants and dependants, furth of and from the subjects hereby let at the expiry or sooner termination of this lease as aforesaid, and that without any warning or process of removing to be used to that effect, so that the first party, or others in his name, may then enter thereto—declaring, nevertheless, that if at the termination of this lease any bricks that may have been manu- Tenant to be allowed two months to dispose of bricks, machinery, &c. factured under the lease shall be on hand undisposed of, or any

machinery, engines, erections, or buildings shall then be left on the ground, the same shall be allowed to remain on the premises for two months, if necessary, to enable the second party to dispose of the same, and for which accommodation surface damages or rent shall be paid by the second party, and there shall be no unnecessary delay or interruption to the operations of any incoming tenant or of the first party, and at the expiry of such period such bricks, machinery, engines, erections, or buildings shall, so far as not removed from the premises, become the property of the first party

**Penalty** without any payment therefor: AND both parties BIND and OBLIGE themselves, their heirs and successors whomsoever, to fulfil their respective parts of the premises to each other under a penalty of £                      sterling, to be paid by the party failing to the party observing or willing to observe the same over and above performance: AND the parties hereto consent to the registration hereof,

**Consent to registration.** and of any awards or decrees-arbitral, interim or final, to be pronounced by the arbiters in any arbitration or reference under this lease for preservation and execution.—IN WITNESS WHEREOF.

### 6. Lease of a Quarry.

IT is CONTRACTED and AGREED between A (*designation*), heritable proprietor of the subjects hereby let, of the *first part*, and B (*designation*), of the *second part*, in manner following: THAT IS TO SAY, the said A, IN CONSIDERATION OF the rent, lordship, and other prestations after written, and with and under the conditions, provisions, and declarations after expressed, hereby SETS and in tack and assedation LETS to the said B, and his heirs, but expressly excluding assignees and subtenants, legal or conventional, trustees or managers for behoof of creditors, and heirs portioners (the eldest heir female

**Description.** always succeeding without division), ALL AND WHOLE the stone quarry of E (*here describe subjects*), (*and if this be so, add all as the said quarry is at present possessed by*                      ), which quarry

**Term.** lies in the parish of                      and county of                      , and that for the space of                      years from and after the term of                      , which is hereby declared to be the term of the said

**Breaks on both sides.** second party's entry to the premises in virtue hereof: BUT DECLARING that the first party or his heirs and successors in the said sub-

jects, or the second party or his foresaids, shall have the privilege or option of a break at the end of                      years—that is to say, a right and power to declare this lease to be at an end, or to relinquish or renounce the same at the term of                      (*or otherwise as the case may be*)—provided the party desirous of exercising such privilege shall give                      months' previous notice in writing to the other party of his intention to avail himself of the said break, and provided that before any such relinquishment or renunciation, all rents and lordships, and arrears of the same, shall be paid to the proprietor, and that the said quarry shall be left red and clear and in proper working order; With full and exclusive power and privilege to the second party and his foresaids to quarry, work, and remove the stone from said quarry as fully and freely as the proprietor could himself have done before granting these presents, and for these ends, and under the conditions and restrictions after-mentioned, to make roads, hutch roads, or railways and tramways, and erect all machinery necessary for working the quarry, and to deposit rubbish (but only at the places and in the direction and manner pointed out by the proprietor), whose previous consent in writing must always be obtained by the tenants as to the extent and direction of the workings, new roads, hutch roads, or railways and tramways, the erection of machinery, and the deposit of rubbish: **DECLARING ALWAYS** that the said tenant shall be bound to conduct and carry on all his operations under this lease so as to do as little injury as possible to the ground in which the said quarry is situated, and the ground in the neighbourhood thereof, and houses, fences, plantations, and crops thereon; **RESERVING ALWAYS** the whole rights, powers, and privileges of the first party's other mineral tenants under their leases of minerals within any part of the lands the stone in which is hereby let, or the rights of tenants under any similar leases which may hereafter be granted; **AND RESERVING** also to the first party all minerals, limestone, fire-clay, common clay, and other mineral substances of whatever kind, other than the stone hereby let, which are or may be found within the subjects before described, with right to him to work and remove the same at pleasure, either by himself or any tenants to whom the said minerals or others or any of them may be let, and that without payment of any compensation or damages to the second party; **PROVIDED ALWAYS** that such working and removal shall not unduly

Manner of  
working.

interfere with or interrupt the exercise of the rights and powers hereby granted to the tenant under this lease, or with the working and removal of the stone hereby let; and also reserving to the first party all trees growing upon the lands to be opened up and quarried under this lease, and these, when cut down in the course of the quarrying operations to follow hereon, shall be carefully laid aside by the second party and preserved for the use of the first party: **WHICH TACK**, with and under the conditions, provisions, and restrictions before and after mentioned, the said A BINDS and OBLIGES himself to warrant at all hands; BUT declaring that he does not warrant the existence, quality, or sufficiency of the stone in the said lands: **FOR WHICH CAUSES AND ON THE OTHER PART**, the said B BINDS and OBLIGES himself, and his heirs, executors, and successors whomsoever, to pay to the said A, his heirs, executors, and assignees, or to his or their factor, or agent for the time, for the said quarry hereby let, the fixed yearly rent of                      pounds per annum, or in the option of the landlord, instead of the said fixed rent, the rent or lordship of                      for each ton of dressed stone or material taken from the said quarry, and the rent or lordship of                      for each ton of undressed material, road metal, or chips taken from the said quarry (*or otherwise as the case may be*), and which fixed rent shall be payable half-yearly at the terms of Whitsunday and Martinmas in each year, beginning the first term's payment at the term of                      for the half-year preceding, and the next term's payment at                      following, and so forth half-yearly thereafter at the said terms of Whitsunday and Martinmas during the currency of this lease, and the amount of the said lordships, shall be ascertained at each term of                      for the year immediately preceding, and the balance, if any, of the amount of the said lordships, over and above the said fixed rent of £                      , shall then be paid to the said A or his foresaids, with a fifth part more of each half-yearly payment of the said fixed rent and of each yearly payment of the said optional rents or lordships, of penalty in case of failure in the punctual payment thereof, and the interest of each half-year's rent and of each yearly payment of optional rent or lordships at the rate of 5 per cent. per annum from the time the same respectively fall due during the not-payment thereof: **AND** the second party BINDS and OBLIGES himself and his foresaids to pay all public, local, and parochial burdens imposed or which may be imposed by law upon tenants of the subjects hereby

Warrantice

Obligations  
by tenants.Rent and  
lordship.

let : AND it is further provided and declared that with the view of ascertaining the exact yearly produce or return from the said quarry hereby let, the second party and his foresaids shall keep in their office at the said quarry regular and proper books, which shall be kept fully written up to date, and which shall exhibit the daily accounts of the whole rock or stone removed, or disposed of from the said quarry, and the quantities thereof shall be ascertained and vouched by the production of the railway weights and by a certified statement of the number of tons removed locally, and which books shall always be open to the inspection of the first party, or of his factor for the time being, or of any other person or persons to be appointed by him : AND the second party shall during the continuance of this lease be bound to transmit yearly to the first party, or to his factor, or agent, within the period of six weeks from each term of abstracts from his books showing the produce and disposals of the stone hereby let during the preceding year, in order that the amount of said optional lordships may be fixed : AND the second party BINDS and OBLIGES himself and his foresaids to quarry the said stone, and generally to work the said quarry, in a regular and proper manner, according to the stretch or lay of the rock, and not to overrun the same, but to carry the whole before them to a sufficient depth, and so that as much rock or stone may be taken out of the said quarry as may be consistent with the economical working thereof ; and in the event of the parties hereto or their foresaids differing as to the proper method of working the quarry, the same shall be decided by, and is hereby referred to the decision of Mode of working.

, whom failing, to , as sole arbiter,

who is hereby empowered finally to decide the same ; AND the second party shall keep and leave the face of the quarry open and free from rubbish, and shall deposit the vegetable mould taken from the surface in such places as shall be pointed out by the proprietor or his factor ; AND he shall deposit at the Arbitration clause as to working. end of the quarry the tiring lying under the vegetable mould, and also the quarry rubbish, and shall bank up such tiring and rubbish at the said Soil and rubbish. end of the quarry as it accumulates to the level of the adjoining field, the base of the embankment not to exceed from the said end of the quarry, and any tiring or rubbish beyond what may fill this space to be taken to such place as shall be pointed out by the proprietor or his factor ; AND the second Fencing.

party and his foresaids shall be bound to maintain in good order and repair the whole roads, railways, hutch roads, or railways, and all tramways connected with the quarry, and also to fence with a strong paling, to the satisfaction of the first party, the said quarry and all roads, railways, hutch roads, or railways, tramways and works, connected therewith, so as to prevent trespass by any person, or by sheep, cattle, or other stock, and they shall be liable for all damage caused to or by such stock through trespass: AND the second party shall be bound and obliged to leave the said roads and fences in good order and repair at the expiry or sooner termination of this lease, all at his own expense, and further to exercise every care in blasting, and to use all known means for preventing stones from flying: AND the second party BINDS and OBLIGES himself to furnish to the proprietor, to be delivered at the quarry, such quantity of rubble and blocks as may be required by him for estate or colliery or mining purposes during the continuance of this lease, the proprietor paying            per cart-load of rubble, and            per cubic foot of blocks, where such blocks do not each exceed in measurement five cubic feet, and where such blocks exceed five cubic feet in measurement, then            per cubic foot for the first five cubic feet,            per cubic foot for the second five cubic feet,            per cubic foot for the third five cubic feet,            per cubic foot for the fourth five cubic feet, and so on in the increasing proportion of            for each additional cubic foot of measurement, according to the size of the block : (a) AND the said second party BINDS and OBLIGES himself and his foresaids to perform all the tarring at the quarry at his own expense, and at the term of            in each year during the currency of this lease, or at the expiry or sooner termination thereof, to pay to the said A or his foresaids, and to the proprietors, tenants, or occupiers of the lands in, upon, or adjoining which the said workings and operations under the lease are to be carried on, and of the houses, buildings, and other erections thereon, or other parties having right to claim the same, all damages of whatever kind which may be done or occasioned by the workings and operations of the tenants under this lease to the surface of the said lands, and to the crops and pasture thereon, and produce thereof, and to the woods,

Stones  
needed by  
the pro-  
prietor.

Tarring to be  
at tenant's  
expense.

Tenant to  
settle all  
damages.

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(a) In lieu of the preceding clause a provision is sometimes inserted that the proprietor shall be entitled to have stones and chips for estate purposes at a reduction of a specified percentage on the schedule rates at the quarry.

plantations, roads, accesses, wells, watering-places, walls, and fences thereon, and to the houses and buildings erected or to be erected upon the lands, including all damages for lands taken for roads, tramways, and quarry workings, and the yearly rent thereof, and to free, relieve, and scaithless keep the said A and his foresaids of all claims whatever for any such damages, or for any damages on any account for or in connection with any of the operations under this lease, at the instance of any person or persons whatever, and for all loss and expense which may be incurred by the said A or his foresaids on account or by reason of such claims; AND ALSO at the expiry or sooner termination of this lease to restore all ground occupied by him in connection with the working of the said quarry (except such ground as the first party may desire to be left unrestored for the future working of the quarry), or to pay in lieu thereof such damages as may be ascertained by arbiters as after-mentioned: AND it is hereby PROVIDED and DECLARED with regard to all claims under this lease on the part of the proprietor for damages, or for rent of ground occupied or damaged, or for the restoration of ground, roads, fences, or others damaged by the tenants' operations, the same shall upon the parties failing to adjust them between themselves, be referred, and the same, and generally all other matters, disputes, and differences which may arise in the working out of the lease between the parties hereto, are hereby referred to the decision of the said

Arbitration  
clause as to  
landlord's  
damage.

, whom failing as above mentioned to the said , whose decision shall be final and binding upon both parties and their foresaids; and the expenses of the necessary proceedings connected with all references or submissions under these presents shall be paid by the party found to be in the wrong, and the arbiter shall have power to decern therefor: AND the said second party BINDS and OBLIGES himself and his foresaids, so far as in their power, to prevent the servants and workmen in their employment from trespassing on the grounds of the farms in the vicinity of the quarry, or on any part of the proprietor's lands in search of game, including hares and rabbits, or for any other purpose, and from injuring the plantations on the said estate, and, if required, to dismiss any person or persons in their employment who shall be found so trespassing on the grounds or injuring the plantations as aforesaid: AND it is hereby AGREED that the proprietor or any person appointed by him, shall at all times have access to the said quarry for the purpose of

Tenant's  
workmen  
not to  
trespass.

Landlord to  
have right  
of access to  
the quarry.

inspecting the workings and ascertaining the amount of ground broken upon and rock wrought, and generally for the purpose of seeing that the whole stipulations herein contained are observed by the tenant and his foresaids: AND it is hereby PROVIDED and

Bankruptcy  
of tenant.

DECLARED that in case the said second party shall become bankrupt, or shall execute a trust-deed for behoof of creditors, or shall possess the premises merely nominally, and account to others for the produce thereof, then it shall be in the power of the proprietor at once to put an end to this lease by intimating in writing to the said second party his desire that the lease should come to an end, and to resume possession of the subjects hereby let without any declarator or other process of law to that effect: AND the second party BINDS

Obligation  
to remove.

and OBLIGES himself and his foresaids to flit and remove themselves, their servants and dependants, furth of and from the subjects hereby let at the expiry or termination of this lease in any of the cases or circumstances before mentioned, and that without any warning or process of removing to be used for that effect, so that the proprietor, or others in his name may then enter thereto: AND FURTHER, the second party shall be entitled at the expiry or sooner termination of this lease, provided all rents, lordships, and other debts due by him to the first party in virtue of this lease shall have been previously paid and discharged, to remove all machinery, tramways, railways, hutch roads, or railways erected by him on the said lands, unless the first party shall desire the same or any part thereof to be left for the future working of the quarry, in which case he shall be bound to leave the same to the first party, who shall take and pay for the same the value thereof, as such value may be ascertained by arbitration as

Implement  
clause.

aforesaid: AND both parties BIND and OBLIGE themselves, their heirs and successors whomsoever to fulfil their respective parts of the premises to each other under the penalty of                   sterling, to be paid by the party failing to the party performing or willing to perform, over and above performance: AND both parties hereto consent

Clause of  
registration.

to the registration hereof, and of any awards or decrees-arbitral, interim or final, to be pronounced by the arbiters in any arbitration or reference under this lease for preservation and execution.—IN WITNESS WHEREOF, &c.

## 7. Lease of Sand and Gravel.

MINUTE of LEASE BETWEEN A (*designation*), heritable proprietor of the subjects after mentioned, *on the one part*, and B (*designation*), *on the other part*.

(*First*) The said A (who, and his successors' proprietors for the Parties. time of the subjects hereby let are all hereinafter included under the general designation of "the proprietor") hereby LETS to the said B and his heirs, but expressly excluding sub-tenants and assignees, legal and conventional, and also creditors or managers for creditors in any way or shape, unless with the consent of the proprietor (the said B and his successors in the tenancy being all hereinafter included under the general designation of "the tenant"): **ALL AND** Subjects let. **WHOLE** the exclusive right to dig and remove the surface sand and gravel contained in (*here describe subjects*), lying in the parish of \_\_\_\_\_ and county of \_\_\_\_\_, all as delineated and coloured \_\_\_\_\_ on the plan or tracing hereto annexed and signed as relative hereto (which plan is not warranted as being perfectly accurate in the delineation and extent, but indicates generally the relative position and boundaries of the subjects let), so far as such sand and gravel can be removed with due regard to the restoration of the ground for agricultural purposes as after-mentioned and without affecting the support of the adjoining lands of \_\_\_\_\_ and march fence thereof: **AND** that for the space of \_\_\_\_\_ years Period of let. from and after the term of \_\_\_\_\_ : **BUT DECLARING** that the tenant shall be allowed a period of eighteen months from the term of entry for ascertaining and satisfying himself as to the extent and quality of the sand and gravel hereby let, and in case the result of his exploration shall not prove satisfactory to him it shall be in the power of the tenant to give up and abandon the lease at the term of \_\_\_\_\_, on giving to the proprietor or his factor or agent written intimation of his intention to avail himself of this power at least fourteen days prior to the said last-mentioned term, provided always that the operations of the tenant in making such exploration and trial shall be conducted exclusively at his own expense: **AND FURTHER DECLARING** that in case the tenant shall not abandon the lease at the expiry of the said trial period of eighteen months, he shall have power to break and put an end to Tenant allowed trial to satisfy himself as to the extent and quality. Breaks.

this lease at the term of \_\_\_\_\_, or at the term of \_\_\_\_\_, in every third year thereafter on giving six months' previous notice in writing to the proprietor or his factor for the time of his intention to avail himself of said power: AND failing such notice the lease shall not be terminable till the next break, and shall in no case be terminated sooner on the ground of the sand and gravel hereby let being unworkable to profit or on any other ground or pretext whatever, which last right the tenant hereby expressly renounces and discharges, and in case of the tenant taking advantage of the power hereinbefore conferred of terminating the lease at the expiry of the trial period as aforesaid, or at any of the breaks before provided in his favour, he shall be bound at the time of giving up the lease to fulfil all the obligations which would have been incumbent on him at its natural expiration in the same manner as if it had come to an end by the lapse of the full period thereof: WITH POWER to the tenant at his own expense and under the conditions hereinbefore and after contained or referred to, to excavate, work, and remove and dispose of the sand and gravel hereby let, and for these purposes (but for no other use or purpose whatever and under the conditions herein contained) to make roads, rail-roads, sidings, tramways, and build stables or storehouses and erect engines, plant, machinery, and fittings in or upon the ground in which the sand and gravel hereby let are situated, such roads, rail-roads, sidings, and tramways being laid off to the satisfaction of the proprietor or his factor, and the sites for and plans of any such buildings being first approved of by him; WHICH lease or tack with and under the conditions and provisions before and after mentioned the proprietor BINDS and OBLIGES himself to warrant to the tenant at all hands: DECLARING ALWAYS that no warranty is given as to the existence or quality of the sand or gravel in the said lands, or as to the correctness of any information which may have been communicated to the tenant regarding the said sand or gravel, the obligation and engagement hereby undertaken by the proprietor being only that any surface, sand, and gravel found in the said lands are hereby let to the tenant on the terms and under the conditions before and after written and no further.

Power to  
make roads,  
railways,  
&c.

Warrantice.

(Second) The said B BINDS and OBLIGES himself, and his heirs, executors, and successors whomsoever, to pay to the said A and his heirs and successors, proprietors of the subjects and others hereby

let, or to his or their factor or agent for the time, the following rents and lordships, viz. :—For the first eighteen months of this lease or trial period as aforesaid lordships only, at the rate hereinafter specified, on all sand and gravel, excavated, worked, or removed from the said lands: For the period from \_\_\_\_\_ to the expiry of this lease, a fixed or minimum rent at the rate of \_\_\_\_\_ pounds sterling per annum for the sand and gravel hereby let, and that whether the tenant shall or shall not work the same, or in the option of the proprietor, and in lieu of the said fixed or minimum rent the following lordship, *videlicet*, for each cubic yard of sand or gravel excavated, worked, or removed from the said ground the sum of \_\_\_\_\_, or alternatively, and in the option of the proprietor, for each ton of twenty hundredweights of sand or gravel removed from the said ground the sum of \_\_\_\_\_, and which fixed rents or lordship shall be payable to the proprietor and his forebears at two terms in the year, Whitsunday and Martinmas (by equal portions in the case of the fixed rents), beginning the first term's payment of the said fixed rents at the term of \_\_\_\_\_ for the half-year preceding, and the next term's payment at the term of \_\_\_\_\_ thereafter, and so forth half-yearly, termly and proportionally thereafter during the currency of this lease, with a fifth part more of each term's payment of the said fixed rent of liquidate penalty in case of failure in the punctual payment, and interest on each term's payment at the rate of 5 per cent. per annum from the respective terms of payment during the non-payment: **DECLARING THAT** the half-yearly instalments of fixed rent, payable as aforesaid, shall be held as payments to account of the lordship of the corresponding half-year in the event of the proprietor declaring his option to take the lordship as after-mentioned: **FURTHER**, during the first eighteen months of the lease, when the lordship only is exigible, the tenant shall, when rendering to the proprietor's factor at Martinmas and Whitsunday the statement of sand and gravel removed as after provided, make payment at each of these terms during the aforesaid period of the amount of lordship ascertained to be due, with interest and penalty as before provided: **AND** for ascertaining the amount of the said lordship, it is hereby provided that the quantity of sand and gravel excavated, worked, or removed during each half-year ending at Martinmas or Whitsunday shall be measured, and the amount of lordship thereon ascertained and

Lordships

Ascertain-  
ment of  
lordship.

checked as soon as possible after each term by Z (*designation*), whom failing, by an engineer or surveyor to be mutually appointed, whose statement of such quantity and the lordship thereon shall be final and conclusive and sufficient to constitute a charge against the tenant upon which diligence may pass for payment of the lordship: AND it is also hereby provided that the tenant shall send to the proprietor or his factor, at each term of Martinmas and Whitsunday, after the commencement of this lease, a statement showing the weight of the sand and gravel removed from the said ground during the preceding half-year, and the lordship due thereon, calculated according to the foresaid rate per ton, and shall also produce, along with the said statement, the railway company's or other vouchers instructing the weight of the said sand or gravel so removed, and it is also hereby provided that the tenant shall, not later than the

Erection of  
steelyard.

term of \_\_\_\_\_, erect at his own expense on the said ground a steelyard or other weighing machine, upon which he shall be bound to weigh, or cause to be weighed, the sand and gravel as it is removed from the said ground, and he shall keep the said steelyard in constant repair and in a correct and accurate state: AND the tenant shall keep a book in which he shall enter from time to time a regular and correct account of the weight of the sand and gravel removed from said ground, which book shall be at all times open to the proprietor or his factor for examination: IN the event of the proprietor within four weeks of the lordship ascertained or stated as aforesaid being intimated to him, declaring his option to take the lordship for the half-year then terminated, the tenant shall forthwith pay the same under deduction of the portion of the fixed rent which may have been previously paid in respect of that half-year, and in the event of the proprietor not declaring his option to take the lordship as aforesaid, he shall be held to have departed from the same in respect of the half-year which terminated at the preceding term: AND it hereby expressly PROVIDED and DECLARED that in case in any year of this lease after the term of \_\_\_\_\_ the lordship

Shorts.

on the sand and gravel shall fall short of the fixed rent exigible in the proprietor's option in lieu thereof, and the fixed rents shall have been paid, the tenant shall be allowed to retain the amount of the deficiency out of the excess of lordship ascertained as aforesaid over the fixed rent during the next succeeding year, but in case only, and if and in so far as there may be any such excess during such succeed-

ing year: THE fees and expenses of the said Z, whom failing as aforesaid, shall be borne and paid by the tenant.

(Third) The tenant hereby BINDS and OBLIGES himself sufficiently Fences. to fence in all ground occupied or entered upon by him, and to maintain the fencing in a thorough state of repair during the currency of the lease.

(Fourth) With regard to all ground occupied or entered upon or damaged by the tenant, the tenant shall pay in respect of the same where such ground is in the occupation of the proprietor when the same is first entered upon, and also where such ground is let to an agricultural tenant, such annual rent as may be agreed upon or fixed by arbitration as after-mentioned, besides the value of all unexhausted manures and damages for loss of crop, such value and damages failing agreement being ascertained also by arbitration as after-mentioned: AND the tenant shall further free and relieve the proprietor of all claims whatsoever at the instance of agricultural tenants in respect of any ground occupied or entered upon or damaged as aforesaid, and if the tenant shall during the currency of this lease give back possession to the proprietor or agricultural tenants of any portion of ground of reasonable extent and capable of being utilised, restored in accordance with the provisions of Clause 6 hereof, he shall be entitled as from the term of Compensation to agricultural tenants. Tenant to relieve proprietor of all claims.

next thereafter to a deduction from the rent to be paid by him for any ground so occupied as aforesaid corresponding and applicable to the ground so given back, as the same, failing agreement, shall be fixed by arbitration as after-mentioned.

(Fifth) The tenant shall be bound to perform and pay for all drainage works rendered necessary by his occupancy of or operations upon any ground, and in particular if at any time during this lease it should be found that his operations interfere in any way with the drainage of neighbouring lands, he shall be bound at his own expense to perform such works as shall completely restore the proper drainage of such lands. Drainage of land.

(Sixth) The tenant shall be bound, as his workings proceed, to collect the soil and preserve it in heaps: and at the expiry or sooner termination of this lease, or as soon as the same is no longer required for the use of his works, to bring the surface of the whole ground occupied or entered upon in the course of his operations to a proper slope and otherwise to a state workable by the plough,

and to spread upon the surface the said soil along with        inches of good loam, or police manure, and generally to restore such ground to an arable state capable of being cultivated with the adjoining fields and of bearing like crops ; AND ALSO to restore the drainage of the said ground in a proper manner, and he shall also if required remove the whole fences erected or used by him, and rebuild or restore any of the existing fences broken down or altered by him, and in bringing the ground to a proper level at the expiry or sooner termination of this lease the tenant shall not be entitled to use any other substance than suitable sand, road scrapings, or soil with a top dressing as aforesaid and the whole work of filling up, levelling, and soiling over the surface and restoring drains and fences, shall be performed at the sight and to the satisfaction of the proprietor's factor for the time.

Restoration  
of ground.

(*Seventh*) The tenant shall be bound to excavate and work the sand and gravel in a regular manner within the areas to be staked off from time to time by the said Z, or other engineer or surveyor as aforesaid, and to remove the sand and gravel, so far as of a merchantable quality, down to the depth or level to be pointed out from time to time by the said Z, or other engineer or surveyor as aforesaid, and such areas shall always be kept sufficiently fenced by the tenant as before provided.

Irritancy.

(*Eighth*) If at any time during the currency hereof the half-yearly rent or lordship shall remain unpaid for one month after the same shall have fallen due as before provided, or if the tenant shall become bankrupt, or insolvent, or grant a trust-deed for behoof of creditors, then, and in any of these events, it shall be in the power of the proprietor to declare this lease to be at an end at the first term of Whitsunday or Martinmas thereafter.

Removal.

(*Ninth*) At the expiry or sooner termination of this lease, the tenant shall be bound, and he hereby BINDS and OBLIGES himself and his foresaids, to remove himself and his servants and others without any warning or process of removal for that effect : AND the tenant shall also be bound to remove the whole railways, buildings, plant, machinery, and utensils connected with the working of the said sand and gravel, and belonging to him, from the ground, unless the proprietor shall three months previous to such expiration, or sooner termination, have given to the tenant, which it is hereby agreed he shall have power to do, notice of his intention to purchase

Proprietor  
to have  
power to  
purchase  
plant, &c.

the said railways, buildings, plant, machinery, and utensils, at a valuation to be ascertained by valuers to be mutually chosen who shall have power to appoint an oversman, in which case the tenant shall be bound to leave the same: AND it is hereby declared <sup>Arbitration.</sup> with regard to all matters hereinbefore mentioned which are to be the subject of arbitration, that all such questions as may arise from time to time, and also any question as to the interpretation or fulfilment of any condition or obligation in this lease, or claims of damages, or as to the method of working the said sand and gravel or any other matters arising out of the non-fulfilment of any condition or obligation hereof (except the matter of restoration of ground referred to in Article 6 hereof) are hereby referred to the said Z, whom failing to an engineer or surveyor to be mutually chosen by the parties as sole arbiter, and the decision of the said Z, or of such engineer or surveyor, shall be final and binding in all respects on the parties.

(*Lastly*) The parties hereto bind themselves to perform their <sup>Penalty.</sup> respective parts of the premises to each other under the penalty of pounds to be paid by the party failing to the party observing or willing to observe the same over and above performance; AND both parties consent to the registration hereof and of the engineer's statement before-mentioned, and of any awards or decrees-arbitral, interim or final, to be pronounced by the said Z or other engineer or surveyor as arbiters aforesaid for preservation and execution.—IN WITNESS WHEREOF. <sup>Consent to registration.</sup>

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SECTION IV

LEASES OF URBAN SUBJECTS

1. Lease of a House within Burgh.

IT is CONTRACTED and AGREED between A (*designation*), heritable proprietor of the dwelling-house after-mentioned, *on the one part*, and B (*designation*), *on the other part*, in manner after-mentioned: THAT IS TO SAY, the said A, IN CONSIDERATION OF the tack duty after specified, has SET, and hereby LETS to the said B and his

**Subjects.** heirs and assignees, and sub-tenants,<sup>(a)</sup> **ALL AND WHOLE** that dwelling-house (*here describe the house, and garden or other pertinents*), and that for the space of \_\_\_\_\_ years from and

**Term.** after the term of \_\_\_\_\_, which is hereby declared to be the said B's entry thereto: **IN** the peaceable possession of which sub-

**Warrantice.** jects the said A **BINDS** and **OBLIGES** himself and his heirs and successors to maintain and defend the said B and his foresaids during the currency of this tack at all hands: **AND** the said A also **BINDS** and **OBLIGES** himself and his foresaids to keep the said house wind and water tight, and in proper tenantable condition, during the whole

**Rent.** currency of this lease: **FOR WHICH CAUSES, AND ON THE OTHER PART,** the said B **BINDS** and **OBLIGES** himself and his heirs, executors, and representatives whatsoever, to pay to the said A, his heirs and successors, the sum of £ \_\_\_\_\_ sterling of yearly rent, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof, being £ \_\_\_\_\_, at the term of \_\_\_\_\_ next, for the half-year preceding, and the like sum at \_\_\_\_\_ thereafter, and so forth half-yearly and termly during the currency of this lease, with a fifth part more of each term's payment of liquidate penalty in case of failure, and interest of the said rent at the rate of 5 per centum per annum from the said respective terms of payment during the not-payment of the

**Removal.** same; **AND** the said B **BINDS** and **OBLIGES** himself, his heirs and successors, to remove at the expiry of this tack without warning:

**Penalty.** **AND** both parties **OBLIGE** themselves and their foresaids to perform the premises to each other under the penalty of £ \_\_\_\_\_ to be paid by the party failing to the party performing or willing to perform over and above performance: **AND** both parties consent to registration hereof for preservation and execution.—**IN WITNESS WHEREOF, &c.**

## 2. Lease of a Dwelling-House with a Public-House underneath.

IT is **CONTRACTED** and **AGREED** between A (*designation*), heritable proprietor of the subjects after-mentioned, *on the one part*, and B (*designation*), residing at \_\_\_\_\_, *on the*

(a) Assignees and sub-tenants must be expressly excluded, if it be the wish of the landlord to exclude them, thus—"excluding assignees and sub-tenants legal or conventional"; or add, if so intended,—“except such as may be approved of by the said A.”

*other part*, in manner following: THAT IS TO SAY, the said A, IN CONSIDERATION OF the rent or tack duty and other prestations and obligations hereinafter specified, hereby LETS to the said B and his heirs (but expressly excluding sub-tenants except with the express consent in writing of the said A, and also excluding assignees legal or conventional, and creditors or trustees or managers for creditors), ALL AND WHOLE that dwelling-house, No.

Subjects.

Street, with the shop underneath the same, both as presently occupied as a dwelling-house and as a public-house by ; and that for the space of years from and after the term of , which is hereby declared to be the Term.

term of the said B's entry to the said subjects in virtue hereof:

WHICH TACK, with and under the conditions, provisions, and declarations before and after written, the said A BINDS and OBLIGES himself and his heirs and successors to warrant to the said B and his foresaids at all hands: DECLARING, as it is hereby expressly PROVIDED and Conditions.

DECLARED, that as the said premises are let for the purpose of carrying on a public-house and retail wine and spirit business, the same shall not be used for any other purpose, and the said B and his foresaids shall duly and properly conduct the business carried on in said premises in such a manner as not to incur a conviction in Court for breach of certificate or other offence against the Public Houses Acts or Excise Laws, or a forfeiture, withdrawal, or refusal of the certificate of license held for said premises under the Statutes for the regulation of public-houses in Scotland; and in the event of such conviction being obtained against the said B, or of the certificate or license for said premises being forfeited, withdrawn, or refused, or in the event of the bankruptcy or declared insolvency of the said B, it shall be competent for the said A and his foresaids immediately to bring this lease to a termination, and to enter into possession of the said premises in the same manner as if the whole years of this lease had run and expired, without any process of law or proceeding of any kind other than a letter addressed and delivered or posted to the said B or his foresaids at the said premises hereby let: FOR WHICH CAUSES, AND ON THE OTHER PART, the said Rent.

B BINDS and OBLIGES himself and his heirs, executors, successors, and representatives whomsoever, to pay to the said A and his heirs, executors, or assignees, the yearly rent or tack duty of £ sterling, whereof £ represents the rent for the dwelling-

house, and £                      represents the rent for the shop under the same, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the term of                      for the half-year preceding, and the next term's payment at                      thereafter, and so forth half-yearly and termly during the currency of this lease, with a fifth part more of each term's payment of liquidate penalty in case of failure, and the interest of the said rent or tack duty at the rate of 5 per centum per annum from the said respective terms of payment during the not-payment: AND the said B and his foresaids shall be bound to keep regular and distinct books, showing in detail the quantities of wines, spirits, beer, and aerated waters sold and consumed during each week on the premises, which books shall be open to inspection by the landlord annually: FURTHER, the said B or his foresaids shall be bound at any time during the twelve months preceding the expiry or sooner termination of this lease to deliver to the landlord, if required, an abstract from his books setting forth the particulars of the wines, spirits, beer, and aerated waters sold and consumed for the three years immediately preceding: AND it is hereby DECLARED that the said A shall not be liable for any repairs that may be necessary on the said premises further than keeping the same wind and water tight, the said B and his foresaids being bound to perform all other necessary repairs at their own expense, and to keep during the whole period of this lease, and leave at the expiry thereof, the whole premises in good tenantable condition and repair: AND it is hereby STIPULATED that the said B and his foresaids shall be entitled to execute such repairs or alterations only as shall be approved of by the said A or his foresaids, and such repairs or alterations shall—except such as can be removed without injury to the premises—become the property of the said A and his foresaids at the expiry of this lease, without any payment or compensation being made to the said B or his foresaids therefor: AND the said B BINDS and OBLIGES himself and his foresaids, at the expiry or earlier termination of this lease, to flit and remove themselves and their families, servants, goods, gear, and effects, furth of and from the subjects hereby let, without any warning or process of removing to be used for that effect: AND FURTHER, C (*designation*), residing at                      , BINDS and OBLIGES himself and his heirs, executors, and successors whomso-

Tenant to  
keep books.

Repairs.

Removal.

Caution.

ever, as cautioners, sureties, and full debtors jointly and severally for and with the said B, that the said B shall pay the rent above stipulated during the first year of the lease at the terms and by the proportions above stipulated: AND all parties BIND and OBLIGE <sup>Penalty.</sup> themselves and their foresaids to implement and fulfil to each other their respective parts of the premises, under the penalty of £ , to be paid by the party failing to the party performing or willing to perform his part hereof over and above performance: AND all parties consent to registration for preservation and execution.—IN WITNESS WHEREOF, &C.

### 3. Lease of Shop and Warehouse.

IT is CONTRACTED and AGREED between A (*designation*), heritable <sup>Parties.</sup> proprietor of the subjects after-mentioned, *on the one part*, and herein-after referred to when not named as the proprietor, and B (*designation*), *on the other part*, and hereinafter referred to when not named as the tenant, in manner following: THAT IS TO SAY, the proprietor, IN CONSIDERATION OF the rent and other prestations and subject to the conditions, provisions, and declarations after-mentioned, hereby LETS to the tenant and his heirs and executors, but expressly excluding, except with the previous written consent of the proprietor, sub-tenants and assignees, legal or voluntary: (*First*), <sup>Subjects</sup> ALL AND WHOLE the shop and warehouse (*here describe the subjects*), <sup>let.</sup> being Nos. Street; and (*Second*) the whole fixtures and fittings in the said shop and warehouse in so far as belonging to the proprietor, all as specified and described in the inventory annexed and subscribed by the parties as relative hereto, and held by them to be correct, and that for the space of years from the term of : WHICH tack, with and under the <sup>Warrantdise.</sup> conditions, provisions, and declarations before and after written, the said A BINDS and OBLIGES himself and his heirs and successors to warrant to the said B and his foresaids at all hands: AND it is hereby DECLARED that the tenant shall not, during the currency of this lease, leave the said premises or any part thereof vacant, nor use the same for any other purpose than for carrying on therein a <sup>Tenant not to use subjects for any other purpose than that for which they are let.</sup> business, nor keep or deposit therein any goods of a hazardous kind, so as to affect the insurance of the premises: AND if at

**Irritancy** any time during the currency of this lease the tenant shall contravene any of the prohibitions or conditions hereinbefore or after written, or shall be sequestrated or cessioed, or shall grant a trust-deed for behoof of creditors or become notour bankrupt, then and in any of these events the proprietor shall be entitled, not only to recover from the tenant all loss and damage he may thereby sustain, but also, and in addition thereto, may, in his option, put an end to this lease: **FOR WHICH CAUSES, AND ON THE OTHER PART, the said B BINDS and OBLIGES himself and his heirs, executors, and representatives whomsoever to pay to the said A and his heirs and successors for the whole subjects hereby let the sum of                      pounds sterling of yearly rent, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the term of                      next for the half-year preceding, and the next term's payment at                      following, and so forth half-yearly and termly thereafter during the currency of this lease, with a fifth part more of each term's payment of liquidate penalty in case of failure, and interest of each term's payment of the said rent at the rate of 5 per cent. per annum from the said respective terms of payment during the not-payment of the same: DECLARING that the tenant hereby accepts of the said premises and others as in good tenantable condition and repair, and BINDS himself and his foresaids, at his and their own expense, to uphold and maintain them during the currency of this lease, and at the termination thereof to leave them in the like good tenantable condition and repair—ordinary tear and wear excepted—and the proprietor and his foresaids shall only be bound to keep the said premises wind and water tight, and to uphold the water supply and drainage, and shall not be bound to execute any other repairs: AND the tenant and his foresaids shall further be bound to insure the whole plate glass on the premises against breakage, and duly exhibit the policy and premium receipts for said insurance to the proprietor: AND the tenant also hereby accepts the whole fixtures and fittings let as in good order and condition, and binds himself and his foresaids to uphold the same during the continuance of this lease, and to renew such portion as may be necessary from time to time, and to leave them at the termination hereof in the like good order and condition, ordinary tear and wear excepted: AND the tenant shall have no right to alter the said premises or any part thereof, or to remove or alter**

**Rent.**

**Repairs.**

**Insurance of plate glass.**

**Fixtures.**

any of the said fixtures and fittings, without the previous written consent of the proprietor; AND all repairs or alterations executed by the tenant, and also all fixtures and fittings which may be introduced into the premises so far as they cannot be removed without injuring the premises, or other fixtures therein, shall belong to the proprietor and his foresaids without payment therefor; AND it is hereby further provided and declared that the proprietor, or any one authorised by him, shall be entitled, on giving the tenant reasonable notice, from time to time, to enter and inspect the premises hereby let, and the tenant shall allow access thereto and to the roof on all reasonable occasions: AND FURTHER, the tenant BINDS and OBLIGES himself and his foresaids to remove from the premises hereby let, at the expiry or earlier termination of this lease, without any warning or process of removing to be used for that effect: AND both parties BIND and OBLIGE themselves and their respective foresaids to perform their respective parts of the premises to each other under the penalty of pounds sterling, to be paid by the party failing to the party observing or willing to observe his part thereof over and above performance: AND they consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF.

Proprietor to have right to enter and inspect premises.

Removal.

Penalty.

Consent to registration.

#### 4. Lease of an Hotel.

IT is CONTRACTED and AGREED between A (*designation*), heritable proprietor of the subjects after-mentioned, *on the one part*, and B (*designation*), *on the other part*, in manner following: THAT IS TO SAY, the said A, IN CONSIDERATION OF the rents or tack duties and other prestations and subject to the conditions hereinafter specified, hereby SETS and in TACK and assedation LETS to the said B and his heirs, but excluding assignees and sub-tenants, and all creditors and trustees or managers for creditors, except with the written consent of the landlord or his successors (the said A and his successors being hereinafter referred to when not named as "the landlord," and the said B and his heirs, and such assignees, sub-tenants, and creditors and managers for creditors as the landlord shall consent to in writing, being hereinafter referred to when not named as "the tenant"): (*First*), ALL AND WHOLE these premises known as Hotel, situated at No. Street (*here describe the subjects*), together with the stables, coach-

Subjects.

houses, bothies, and other offices belonging thereto; and (*Second*) the whole fixtures and fittings in the said premises in so far as belonging to the landlord, all as specified and described in the inventory annexed and subscribed by the parties as relative hereto and held by them to be correct: AND that for the space of            years from and after the

**Term.**            term of            ; WHICH TACK with and under the conditions, provisions, and declarations before and after written, the said A BINDS and OBLIGES himself and his heirs and successors to warrant to the said B

**Warrantice.**            and his foresaids at all hands: FOR WHICH CAUSES, AND ON THE OTHER PART, the said B BINDS and OBLIGES himself and his heirs, executors, and successors whomsoever, to pay to the said A for the whole subjects hereby let the yearly rent of £            sterling, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment at            for the half-year preceding, and the next at            following, and so forth half-yearly, termly, and proportionally thereafter during this lease, with a fifth part more of each term's payment of liquidate penalty in case of failure, and interest at the rate of 5 per cent. per annum from and

**Rent.**            after each term's payment becoming due during the not-payment: AND in respect that the landlord has agreed to carry out, at his own expense, by the            day of            , the following repairs and alterations (*here describe the repairs and alterations to be executed if any*), the parties hereto do hereby agree and BIND and OBLIGE themselves and their foresaids to each other respectively as follows: *videlicet* (*First*), Subject to the obligation on the part of the landlord to make and execute the said repairs and alterations hereinbefore specified, the tenant hereby accepts the premises first hereby let as in good tenantable order and condition, and binds himself and his foresaids at his or their own expense to uphold and maintain the same, and also the said alterations when completed, during the continuance of this lease in the like good order and condition, and to leave them so at the termination hereof, ordinary tear and wear excepted: AND the landlord hereby binds himself and his foresaids to keep the said premises wind and water tight, but he and they

**Repairs.**            shall not be bound to execute any other repairs: (*Second*), The said tenant hereby accepts the whole fixtures and fittings hereby let and those which may be substituted therefor, and also the plate glass and other glass throughout the said premises as in good order and condition, and the tenant shall be bound to uphold the same during

**Fixtures.**

the continuance of this lease, and to renew such portions as may be necessary from time to time, and to leave them at the termination hereof in equally good order and condition, ordinary tear and wear excepted: (*Third*), The plate glass and the stained and other glass both in the doors and windows, and the mirrors belonging to the landlord shall be insured by him: AND the tenant shall be bound to repay to the landlord one-half of the premiums paid by him for such insurance at the first term of Whitsunday or Martinmas after each payment thereof by the landlord: (*Fourth*), The tenant shall Alterations. not be entitled to make any alterations on the premises hereby let unless with the consent of the landlord in writing: (*Fifth*), The Inspection. landlord, or any one authorised by him, shall be entitled, on giving the tenant reasonable notice, from time to time to enter and inspect the premises hereby let, and the tenant shall allow access thereto and to the roof on all reasonable occasions: (*Sixth*), The business to Conditions. be carried on by the tenant shall be that of a first-rate licensed hotel and posting establishment, and the said premises shall not be used for any other purposes whatever: FURTHER, the tenant shall be bound to conduct the said business in a proper manner, and during the currency of this lease to keep the whole premises fully plenished and furnished, and open as a going concern: AND in the event of the license for the whole or any part of the said premises being lost, withdrawn, or suspended, or a conviction under the Statutes relating to licenses or licensed houses being obtained against the tenant through his fault or the fault of any one in his employment, or in the event of the bankruptcy or declared insolvency of the tenant, or of any assignation or sub-set hereof being granted without the written consent of the landlord, then the landlord shall be entitled at once to terminate this lease, and to enter into possession of the said premises in the same manner as if this lease had, after due and legal notice and warning expired, and that without any process of law other than a letter from the landlord or his agent addressed to the tenant, and either posted to him or delivered at the said hotel: FURTHER, in the event of the bankruptcy or declared insolvency of License. the tenant, or of any such assignation or sub-set as aforesaid, the tenant shall be bound to endorse the license for the said premises to and in favour of the landlord or any one named by him, and in case of an application being made for the transfer of the license existing at the time, or for the granting of a new license to the

Tenant to  
keep books.

Termina-  
tion.

Removal.

landlord, or to any one approved by him, the tenant shall concur in such application : AND the landlord shall further be entitled, and shall be authorised by the tenant to concur in any such application on the tenant's behalf, and as representing and acting for him : AND FURTHER, all the landlord's claims for rent under the lease, and for damages in respect of the termination of this lease and loss of license shall be, and are hereby, reserved : (*Seventh*), The tenant shall keep regular and distinct books, showing in detail the return from the hotel business, the bars, and the posting establishment, and setting forth in particular the number of customers resident in the hotel during each week, and also the quantities of wines, spirits, beer, and aerated waters sold and consumed in the hotel and bars during each week ; and which books shall be made up and balanced at the                      day of                      in every year : AND the landlord shall have power to inspect the said books annually, if desired, and in the event of the tenant falling into arrear with his rent, to have them audited monthly by any one appointed by him : FURTHER, the tenant shall be bound at any time during the twelve months preceding the termination of this lease, whether at the expiry hereof, or of any period for which it may be renewed either expressly or tacitly, or through the landlord exercising the power of termination stipulated in the immediately preceding article, if required, to deliver to the landlord an abstract from his books, setting forth the particulars before referred to as requiring to be entered therein, and that for the period of three years immediately preceding the date when such a statement is required, and also to deliver to the landlord similar abstracts or statements during each succeeding month until the termination of the lease, or of the period for which it may be renewed : ALL which abstracts or statements the landlord shall be entitled by himself, or by an accountant named by him, to check with the books : (*Eighth*), In the event of either the landlord or tenant not wishing to renew the lease at its expiry, the party desiring to terminate it shall be bound to give six months' previous notice in writing to the other party of his intention so to do, failing which notice the lease shall be held to be renewed for one year, and so on from year to year thereafter : AND after such notice, the tenant shall be bound to allow parties having an order of admission from the landlord or his agent to see through the premises : And (*Lastly*), the tenant shall be bound at the expiry of this lease to flit and

remove himself, his servants, goods and gear, furth of and from the whole premises hereby let, and that without any other procedure than the said written notice : AND in the event of his failing so to do, to pay to the landlord as pactional rent for the said premises for the period during which he may occupy the same, after the expiry of this lease, double the rent payable therefor under this lease, but that without prejudice always to the landlord's right to remove him from the premises, and any rights he may have to damages : AND Penalty. the parties hereto bind themselves and their foresaids to implement their respective parts of the premises to each other under the penalty of                      pounds sterling, to be paid by the party failing to the party performing, or willing to perform the same over and above performance : AND they consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF.

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#### SECTION V

### LEASES OF RURAL SUBJECTS

#### 1. Lease of Mills.

IT is CONTRACTED and AGREED between A (*designation*), heritable proprietor of the subjects after specified, *on the one part*, and B (*designation*), *on the other part*, in manner following: THAT IS TO SAY, the said A, IN CONSIDERATION OF the tack duty and other prestations after specified has SET and hereby, under the reservations, conditions, provisions, and declarations after specified, SETS, and in tack and assedation LETS to the said B and his heirs, but excluding assignees and sub-tenants unless with the written consent of the said A or his heirs or successors, ALL AND WHOLE Description these mills upon the water of                      belonging to the said A, commonly called                      , whereof                      are fitted up and used as flour mills, and one as a shealing mill, with the water for driving the said mills, and the kiln and miller's house, lofts, machinery, and apparatus, and whole other appurtenances and pertinents belonging to the subjects hereby let, as the same are presently possessed by M, all lying within the Parish of S, and County of T, together with the whole thirlage and astricted multures belonging to the said mills: BUT EXCEPTING ALWAYS, and expressly reserving to the

said A, his heirs and successors, the dry multures payable by the brewers and maltmen within the thirl for malt ground or manufactured by them with mills of their own, from which dry multures the said B and his foresaids are hereby secluded and debarred; and that

**Term.** for the period of                      years, from and after the term of                      next, which is hereby declared to be the term of the said B's entry

**Warrantice.** to the said subjects: WHICH LEASE, with and under the reservations, conditions, and declarations after written, the said A BINDS and OBLIGES himself, his heirs and successors, to warrant at all hands, except as to the payment and performance of the astricted multures, sequels, and services, which he obliges himself and his foresaids to warrant from fact and deed only; and for enforcing the due payment and performance thereof the said B shall be at liberty to prosecute either in his own name or in the name of the said A, or

**Rent.** in both, as he shall think proper: FOR WHICH CAUSES, AND ON THE OTHER PART, the said B hereby BINDS and OBLIGES himself and his foresaids to content and pay to the said A and his foresaids yearly during the currency of this tack, the sum of £                      sterling in name of rent or tack duty, and that at four terms in the year, Candlemas, Whitsunday, Lammas, and Martinmas, by equal portions, beginning the first term's payment at the term of                      next to come, and the next term's payment thereof at                      next, and so forth quarterly thereafter during the currency of the foresaid tack, with one-fifth part more of each quarterly payment of liquidate penalty in case of failure in the punctual payment of the said tack duty, and interest on each of the said quarterly payments at the rate of 5 per centum per annum from the time the same shall become due, during the not-payment thereof: AND the said B BINDS and OBLIGES himself and his foresaids sufficiently to serve the thirl in grinding all manner of grain which may be brought to the said mills, agreeably to the obligations on the said A in his charters and other rights from the superior thereof: AND the said B hereby accepts of the said mills, kiln, miller's house, lofts, machinery, apparatus, and others as in good and sufficient order, and under the exception and declaration after-mentioned BINDS and OBLIGES himself and his foresaids to uphold and maintain the same during the currency of the foresaid tack, and to leave them in the like good order and condition at the expiry thereof; the said A and his foresaids being always obliged to keep the houses and

mills wind and water tight, and also the watercourse or mill lead from the water of                      to the mills and the dam head in proper order during the foresaid currency: BUT DECLARING always that the <sup>Repairs</sup> said B and his foresaids shall be BOUND and OBLIGED to furnish the said A with the assistance of his millers and other servants both in repairing the dam head and also in mending the mill lead or watercourse, at all times when such repair may be necessary, agreeably to use and wont: AND if at any time it shall happen that the basin or mill loch, from its being too high gathered, shall make any breach or encroachment on the bank surrounding the meadow or drained ground belonging to the said A, in that case the said A and his foresaids shall have it in their power to run off the water so as to repair the said breaches with all speed; and if the said breaches or encroachments be occasioned by the fault or negligence of the said B or his servants, the said B shall be liable to the said A in all damages or expenses he may sustain or incur thereby: AND FURTHER, it is hereby AGREED betwixt the parties that in case <sup>Conditions.</sup> the brewers and maltmen within the thirl shall, in consequence of decrees already obtained or which may be hereafter obtained against them by the said A, bring their malt to be ground at the said mills in time coming, in that event the said B shall be bound and obliged, as he by acceptance hereof BINDS and OBLIGES himself and his foresaids, to cede and give up to the said A and his foresaids any one of the said mills he or they may make choice of, excepting the oatmeal or shealing mill, so that they may be enabled to serve the said brewers or maltmen, and that whenever he or they shall be required to do so by the said A and his foresaids; and for which mill so to be given up the said B and his foresaids shall from thenceforward be entitled to a yearly deduction and allowance out of the foresaid rent stipulated to be paid by them for the subjects hereby let, of the sum of £                      sterling: AND FURTHER, it is hereby STIPULATED and expressly DECLARED that no alteration whatever in the price of grinding, either in raising or lowering the same, shall take place without the consent of the said A or his foresaids: BUT PROVIDING and <sup>Breaks.</sup> DECLARING ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that although this lease is granted for the space of                      years, yet it shall be optional to and in the power of the said A and his foresaids to put an end to the same, and also of the said

**Removal.** B and his foresaids to renounce the same at the end of the third, seventh, or twelfth year hereof, if either of the said parties shall think proper: PROVIDING ALWAYS that the party intending to take advantage of any of such breaks, shall give written intimation of his intention so to do to the other party at least three months preceding the period when it is intended that such break should take effect: AND the said B hereby BINDS and OBLIGES himself and his foresaids to flit and remove themselves, their families, goods and gear, millers, servants, and dependants, from the subjects hereby let, at the expiry of this lease, without any process at law or previous warning (other than what is above specified) to be made to them by the said A and his foresaids to that effect: AND both parties **Penalty.** BIND and OBLIGE themselves and their foresaids to implement their respective parts of the premises to each other, under the penalty of £                      sterling, to be paid by the party failing to the party performing or willing to perform, over and above performance: AND they consent to the registration hereof for preservation and execution. —IN WITNESS WHEREOF, &c.

## 2. Lease of Mills, bearing reference to Plans of the Buildings and Drawings of the Machinery.

IT IS CONTRACTED and AGREED between A and B (*designations*), trustees under disposition and settlement (*or otherwise, as the case may be, giving particulars*), of the first part, and D and E (*designations*), of the second part, in manner following, *videlicet*—The said first parties have SET, and hereby in tack and assedation LET to the said D and E, and the survivor of them, and the heirs of the survivor, but expressly excluding assignees and sub-tenants, **Description.** without the consent in writing of the said first parties, ALL AND WHOLE that plot or steading of ground (*describe it*), but under the whole burdens, restrictions, and others as to the use of the said ground specified in the said first parties' titles thereto, with the whole buildings, erections, and machinery on the said piece of ground, commonly known as                      grain mills, consisting of the buildings of the mill, kiln, grain stores, and shop and counting-house on the street floor of the stores, the steam-engines, boilers, stones, meal, flour, and barley mill machinery, water-pipe, and whole other fixed

machinery and apparatus (but excluding moveable utensils), all as shown and specified in plans and inventories thereof, and of the said mills, docqueted and subscribed by the parties as relative hereto : TOGETHER ALSO with the right to take water from the river Right to water. or to supply water otherwise, in the first parties' option, for the use of the said mills and others, and the right to use the pipe leading from the river to the same through the ground claimed

by or belonging to , in terms of a contract or agreement dated , the first parties being bound to pay the annual sum of £ stipulated by the said agreement : BUT DECLARING that nothing herein contained shall prevent the said first parties from challenging the said ' right to exact the said sum and to reduce the said agreement as contrary to law ; AND that for the space of years from and after the term of Term.

, 19 , which is hereby declared to be the term of entry of the second parties to the subjects hereby let : WHICH TACK Warrandice. the first parties, under the reservation after-written, BIND and OBLIGE themselves, and their successors in office, to warrant to the said second parties and their foresaids from all facts or deeds done or to be done by them in prejudice hereof : AND they BIND and OBLIGE the trust-estate under their management to warrant the same at all hands, but excepting from the said warrandice the current leases or tacks of the shops situated in the lower flat of the foresaid grain stores : PROVIDING and DECLARING ALWAYS that it shall be in the Breaks. power of either of the parties hereto or their foresaids to annul and put an end to this lease at the term of , in the year

, upon six months' previous notice being given by the party desiring to bring the same to a termination, of their intention so to do : FOR WHICH CAUSES, AND ON THE OTHER PART, the said second Rent. parties hereby BIND and OBLIGE themselves, conjunctly and severally, and their heirs, executors, and successors whomsoever, to make payment to the said first parties and their foresaids of the sum of £ of yearly rent, at two terms in the year, and by equal portions, beginning the first term's payment at the term of for the half-year preceding that date, and the next term's payment at , in full of the first year's possession and rent, and so forth half-yearly thereafter during all the years of this lease, with one-fifth part more of liquidate penalty for each term's failure, and interest at the rate of 5 per



thereof: AND the second parties BIND and OBLIGE themselves to Removal. flit and remove themselves, their servants and dependants, goods and gear, furth of and from the subjects hereby let, at the expiry of this lease, without any warning or process of law: AND LASTLY, both Penalty. parties BIND and OBLIGE themselves and their foresaids to implement to each other their respective parts of the premises under the penalty of £ , to be paid by the parties failing to the parties performing or willing to perform, over and above performance: AND both parties consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

### 3. Lease of Salmon-Fishings in River.

IT IS CONTRACTED and AGREED between A (*designation*), heritable proprietor of the salmon-fishings after-mentioned, *on the one part*, and B (*designation*), *on the other part*, in manner following: THAT IS TO SAY, the said A has SET, and IN CONSIDERATION OF the yearly rent and other prestations after specified SETS, and in tack and assedation LETS to the said B and his heirs, expressly excluding assignees, legal or voluntary, and sub-tenants, unless with the written consent of the said A and his heirs and successors, ALL Description. AND WHOLE the following salmon-fishings in the river T, belonging to the said A, and known as (*describe fishings*), with the whole usual pertinents of the said fishings, all lying in the Parish of , and County of , and all as now or lately possessed by D and E (*designations*), tenants thereof; AND THAT for the space of Term. years or fishing seasons, commencing with the present year or fishing season 19 , and ending with the year or fishing season 19 , both inclusive, as the duration of the same is or may be fixed by Act of Parliament, or by any bye-laws made or to be made by any competent authority: WITH ENTRY to the fishings hereby let at the day of , 19 , being the commencement of the fishing season for that year, to be thenceforth peaceably occupied and possessed by the said tenant and his foresaids during the period above mentioned: WITH full power to the said B to fish for and take with net and coble and other legal engines all the salmon, grilse, salmon-trout, black fish, and other fish of the salmon kind within the bounds of the said fishings, and to use

and dispose thereof at his pleasure, with full power also to him at his own expense to prosecute and pursue any other person or persons (except as after-mentioned) that shall fish for, catch, or destroy at any time of the year any salmon, grilse, salmon-trout, black fish, smolts, or other fish of the salmon kind within the bounds of the fishing: BUT EXCEPTING ALWAYS from the rights hereby conferred upon the said B the right of rod-fishing in the fishings hereby let from and after the close of the net-fishing in each year of this lease, to be exercised by the proprietor or those having his authority [or by any tenants to whom he may communicate the privilege of rod-fishing along with the shootings on the estate of \_\_\_\_\_, or persons having authority from such tenants]:

**Reservation of rod-fishing after close of net-fishing.** DECLARING that the present lease is granted and accepted under the provision and stipulation that the tenant shall have no claim for compensation from the proprietor, or deduction from the rent hereby stipulated, in consequence of any legislative measures being passed affecting the existing modes and periods of fishing in the T, or altering in any way the existing laws applicable to salmon-fishings in the T, or bye-laws being made by any competent authority

**Future legislation.** so as to take effect during the currency of this tack: WHICH LEASE, under the conditions, provisions, and declarations before and after written, the said A BINDS and OBLIGES himself and his heirs to warrant to the said tenant and his foresaids at all hands: FOR

**Warrandice.** WHICH CAUSES, AND ON THE OTHER PART, the said B BINDS and OBLIGES himself, his heirs, executors, and successors, to pay to the said A, his heirs and successors whomsoever, or to his or their factor for the time, the sum of £ \_\_\_\_\_ sterling of money-rent yearly, by three equal portions or instalments, at and upon the 1st day of April, 1st day of June, and 1st day of August yearly, commencing said payments at the foresaid dates in the year 19 \_\_\_\_\_ for the first year or fishing season's possession under this lease, and also to deliver yearly at \_\_\_\_\_, or such other place as may be required, \_\_\_\_\_ good salmon of \_\_\_\_\_ lb. weight each, and that at such times during the season as may be required, and if not required, to pay the conversion of said kain-salmon in money, at the rate of \_\_\_\_\_ per lb. for each salmon, and continuing the delivery of said salmon or payment of the conversion price thereof in the option of the proprietor for the time, and the payment of the money-rent, at the dates before specified during the remainder of the lease, with a

**Rent.**

**Kain salmon.**

fifth part more of each proportion or instalment of liquidate penalty in case of failure in payment of the said money-rent when due, and interest at the rate of 5 per centum per annum on each instalment and conversion from and after the time the same respectively becomes due during the non-payment of the same: AND FURTHER, <sup>Bills for rent.</sup> the said B BINDS and OBLIGES himself on or before the 1st day of December preceding the commencement of each fishing season to grant and deliver to the said A or his factor duly authorised, bills for the ensuing season's rent, drawn by the said tenant and accepted by one or more salesmen of wealth and respectability, or by other good and responsible persons, and that to the satisfaction of the said A or his foresaids, payable the said bills in London, Edinburgh, or

, in the option of the proprietor for the time, at the several dates above mentioned, as applicable to the payment of the said rent: AND it is hereby specially PROVIDED and DECLARED that <sup>Irritancy if bills not granted.</sup> in case the said bills shall not be granted as before specified, then and in that case it shall be in the power of the proprietor and his foresaids, without any judicial warrant or authority, to let the said fishings by public roup, after advertisement for two weeks in two newspapers published in the county of P, and by printed handbills, at such rent as can be obtained for the same, and the said B and his foresaids shall be liable for the deficiency of rent, if any such there be, between the rent hereby stipulated and that which may be thereby realised: AND FURTHER, in case the said tack duties shall <sup>Irritancy.</sup> not be fully paid up to and discharged by the said A or his foresaids, or his or their factor yearly and termly within the space of two months after the respective terms of payment before mentioned, then and in that event this tack shall, in the option of the said A or his foresaids, become *ipso facto* void and null, and the said A or his foresaids shall be at liberty immediately to remove from the said fishings and pertinents the said tenant or his foresaids, and to take possession thereof *brevi manu*, or by removing and ejection on summary application to the Sheriff of P, without any declarator, warning or process of removing to be used for that effect: AND the said B, by these presents, for himself and his foresaids, RENOUNCES and DISCHARGES all title or claim he has or can anywise pretend to purge this irritancy: RESERVING ALWAYS, however, to the said A and his foresaids notwithstanding this irritant clause, full right to use all manner of diligence on this tack for recovery of the said rent after

the respective terms of payment thereof, in so far as the same shall not have been paid from the produce of the said fishings, after deducting the expenses of working the same by the proprietor: **AND** the tenant and his foresaids are hereby bound, as the said B BINDS and OBLIGES himself and them, to fish the fishings faithfully and regularly in conformity with the laws and regulations in force for the time being for the salmon-fishing in that part of the river T, and not to allow the fishing to remain unfished for any time during the legal periods of fishing, and also to clean the whole waters sufficiently, and to keep the fishings and laws, and hauling places and leads belonging thereto, redd and in proper order and repair during the whole currency of this tack, and to leave them so at the end thereof, or at their removal from the said fishings; **AS ALSO**, to keep in repair the fishermen's houses, and leave them in a state of proper repair at the end of this tack or at their removal from the fishings: **AND FURTHER**, the tenant BINDS and OBLIGES himself and his foresaids to pay all the expenses connected with the watching and protecting of the said fishings, and one-half of all assessments imposed or to be imposed upon the said fishings by the District Fishery Board: **AND** it is hereby PROVIDED and DECLARED that the said B and his foresaids shall have no claim upon the said A or his foresaids for damage or retention of rent on account of the present mode of working the fishings in the T, or any other mode that may afterwards be used, nor on account of the means employed or which may be employed during the currency of this lease for the artificial propagation of salmon in the T, or from damage inflicted on the said fishings by floods in the river, or on any other account whatever: **AND** the said B BINDS and OBLIGES himself and his foresaids at the expiry of this tack to flit and remove themselves and their tenants and sub-tenants (*if sub-lets shall have been sanctioned*) furth of and from the said fishings, fishing lodges, and others hereby let, without any warning or process of removing for that effect, and to leave the same void and redd at the term of after the close of the last fishing season: **AND LASTLY**, both parties BIND and OBLIGE themselves and their foresaids to implement their respective parts of the premises to each other under the penalty of £ sterling, to be paid by the party failing to the party performing or willing to perform, over and above performance: **AND** both parties consent to

Manner of fishing.

Houses.

Tenant not to have claims for damages on certain grounds.

Removal.

Implement.

registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

#### 4. Lease of Salmon-Fishings in the Sea.

IT IS CONTRACTED and AGREED between A (*designation*) (herein- Parties. after referred to when not named as "The Proprietor"), *on the one part*, and B (*designation*) (hereinafter referred to when not named as "The Tenant"), *on the other part*, in manner following: THAT IS TO SAY, the said A has SET, and IN CONSIDERATION OF the rent and other prestations after specified, hereby LETS to the said B and his heirs, but expressly excluding assignees, legal and conventional, and sub-tenants, ALL AND WHOLE (*here describe the fishings*), together Subjects let. with the fishermen's houses, bothies, stores, and ice-houses belonging to the said fishings, all lying in the Parish of , and County of , all as presently possessed by C (*designation*) as tenant thereof; and that for the space of Period of let. years or fishing seasons commencing with the present year or fishing season , and ending with the year or fishing season , both inclusive, as the duration of the same is or may be fixed by Act of Parliament, or by any bye-laws made, or to be made, by any competent authority: WITH entry to the fishings hereby LET on the day of , being the commencement of the fishing season for the year, to be thenceforth peaceably occupied and possessed by the tenant and his foressaids during the period above mentioned, DECLARING that the present lease is granted and accepted under the provision and stipulation that the tenant shall have no claim for compensation from the proprietor or deduction from the rent hereby stipulated in consequence of any legislative measures whether by Act of Parliament or otherwise, or orders altering or affecting the existing modes and periods of fishing or altering in any way the existing laws applicable to salmon-fishings in the sea, so as to take effect during the currency of this lease: BUT in the event of the existing modes or periods of fishing being altered or affected, it shall be in the option of the tenant to renounce this lease as from and after the Future of legislation. day of in any year during the currency thereof on giving to the proprietor six months' previous written notice of his intention so to do: WHICH LEASE under the conditions, Warrandice.

provisions, and declarations before and after written, the said A BINDS and OBLIGES himself, and his heirs and successors, to warrant to the tenant and his foresaids at all hands; FOR WHICH CAUSES, AND ON THE OTHER PART, the said B BINDS and OBLIGES himself and his heirs, executors, and representatives whomsoever, all conjunctly and severally, to pay to the said A, or to his factor or agent for the time being, the sum of                      pounds sterling of yearly rent, and that by two equal instalments on the 15th day of May and the 11th day of November in each year (*or otherwise, as the case may be*), commencing the first payment at the                      day of                      in the year                      , and the next payment at the                      day of                      thereafter, and that for the first year or fishing season's possession under this lease; AND ALSO to deliver yearly at                      or such other place as the proprietor may desire                      salmon or grilse, and that at such times during the season as may be required, and to continue the delivery of the said salmon or grilse and the payment of the said money rent on the dates before specified in each year during the whole currency of this lease, with a fifth part more, of each instalment of liquidate penalty in case of failure in payment of the said money rent when due, and interest at the rate of 5 per cent. per annum of each instalment thereof from the time the same respectively becomes due during the not-payment thereof: AND

**Rent.**

**Irritancy.** FURTHER, IT IS HEREBY STIPULATED and AGREED that if the tenant shall during the currency of this lease become bankrupt or insolvent or execute any trust-deed for behoof of his creditors, or if he shall allow the foresaid rent for any half-year to remain unpaid for three months after the same shall fall due, then and in any of these events this lease shall in the option of the proprietor become *ipso facto* void and null without the necessity of any declarator or other process of law to that effect, and it shall be in the power of the proprietor immediately to declare this lease at an end, and to resume possession either *brevi manu* or by removing and ejection or summary application to the Sheriff of                      or his substitute: AND DECLARING that the tenant shall not be entitled to purge this irritancy in any manner of way; RESERVING NEVERTHELESS to the proprietor full right to use all manner of action and diligence for recovery of the whole rents payable for the possession under this lease after the respective terms of payment thereof in so far as the same

shall not have been paid: AND the tenant binds himself and his <sup>Method of fishing.</sup> foresaids to work and fish the whole waters efficiently, and to keep the fishings in proper order during the whole currency of this lease, and to leave them in the like order at the termination thereof on their removal from the said fishings: AND HE HEREBY ACCEPTS of the whole buildings and stores connected with the said fishings as in good tenantable order and repair, and BINDS and OBLIGES himself <sup>Repairs.</sup> to maintain the same in the like good order and repair during the currency of this lease, and at the expiry thereof to deliver them to the proprietor or incoming tenant in the like order and repair, fair wear and tear alone excepted: AND FAILING his doing so he shall pay for the deterioration thereof such sum, as may, failing agreement, between the parties be fixed by arbiters to be mutually chosen, or by an oversman to be named by them in the event of their differing in opinion; AND FURTHER, the tenant binds himself and his foresaids in <sup>Spreading of nets.</sup> spreading nets upon the shores not to cause any damage or annoyance to the tenants of the lands, and to pay for any damage that may thereby be occasioned to the said tenants: AND the tenant and <sup>Landing of fish and boats.</sup> his foresaids shall not be allowed to land fish or boats on any portion of the shore except at the fishing station [(where applicable add), and shall be bound not to trespass on any portion of the proprietor's estate of \_\_\_\_\_, but to keep to and use the public or service roads in going to and from the said fishings]: FURTHER, the <sup>Scringing.</sup> tenant shall not be permitted to scringe, and for every offence of scringing he shall pay a fine of £20 to the proprietor: AND he and his servants shall be bound, as he hereby BINDS and OBLIGES himself and them, to assist the proprietor and his servants in keeping away scringing boats in pursuit of salmon, and to furnish all information which he may obtain with a view to the prosecution of the offenders, and in like manner the proprietor BINDS and OBLIGES himself to assist the tenant and his servants in protecting the fishing hereby let: AND the tenant BINDS and OBLIGES himself and his foresaids at the <sup>Removal.</sup> expiry of this lease to flit and remove themselves furth of and from the said fishings and pertinents without any warning or process of removing to be used to that effect, and to leave the same void and redd within \_\_\_\_\_ days after the close of the last fishing season; AND LASTLY, both parties bind themselves and their respective fore- <sup>Penalty.</sup> saids to implement and perform their respective parts of the premises to each other under the penalty of \_\_\_\_\_ pounds sterling,

to be paid by the party failing to the party performing or willing to perform over and above performance; AND both parties consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF.

### 5. Lease of Mansion-House and Shootings.

IT is CONTRACTED and AGREED between the parties following—viz., A (*designation*), of the *first part*, and B (*designation*), of the *second part*, in manner following: THAT IS TO SAY, the said A has SET and IN CONSIDERATION OF the rent and other prestations and conditions after specified hereby LETS to the said B and his heirs, but expressly excluding assignees legal or conventional and all sub-tenants, without the written consent of the proprietor, the mansion-house of X, in the County of Y, as a furnished residence, with the offices, policies, shrubberies, gardens, vineries, and conservatories, and whole other pertinents thereto belonging; AS ALSO the exclusive right to the shootings on the lands and estate of X, lying in the Parish of , and County of , (but without prejudice to such right as the tenants and farmers on the said estate may have by statute, or at common law to kill hares and rabbits, and subject to any provisions in existing leases relating thereto), together with the right of rod-fishing for salmon in the river L, belonging to the said estate (which is exclusive so far as the said estate of X is situated on both sides of the river, and on alternate days with the proprietor of the opposite bank of the river where one side thereof belongs to another proprietor); AS ALSO the fishing in the lochs on the said lands, and in the streams running through or bounding the same, so far as the said rights of fishing pertain to the said A, and that for the space of years from the term of Whitsunday next, 19 : BUT DECLARING that this lease shall, in the event of the death of the said A during its currency, terminate in the option of his successor in the said estate of X at the next term of Whitsunday thereafter: AND ALSO DECLARING that it shall be in the power of the said B to terminate this lease at the terms of Whitsunday, 19 , and Whitsunday, 19 , on giving six months' previous written notice of his intention so to do to the proprietor, or to his factor, or agent for the time (*or the breaks may be mutual*): AND IT IS HEREBY PROVIDED that the said B shall have the services

Consent to registration.

House and pertinents.

Shootings.

Fishings.

Term.

Optional break to successor of proprietor.

Optional break to lessee.

Game-keepers, &c.

of gamekeepers and gardeners on the said estate (*or as the case may be*), who shall be his servants during the period of his tenancy, with full power to him to dismiss them whenever he shall see sufficient cause therefor; AND the said B shall pay the wages of the said gamekeepers and gardeners; BUT in the event of the dismissal of any of the said gamekeepers or gardeners the proprietor shall be consulted in regard to the parties to be engaged in the places of those so dismissed, and his approval shall be obtained before any appointment is made; AND the said B shall bear the whole expense of keeping up <sup>Garden.</sup> the garden, and shall provide seeds and labour therefor, and coals for the vineries, and conservatories, but he shall be entitled to such carriages of coals for the same, and for consumption in the said mansion-house, as the tenants on the said estate are bound by their lease to convey to the extent of                      tons yearly; AND <sup>Manure.</sup> the whole manure made in the stables and byres attached to the said mansion-house shall be used for the garden, and in the event of that being insufficient for the purpose, the said B shall be bound to purchase and bring to the garden such further quantity of manure as may be required therefor; AND he shall further be obliged to <sup>Upholding of roads, &c.</sup> uphold and maintain in proper order and repair the roads or approaches to the said mansion-house and the walks in the pleasure-grounds: WHICH LEASE, with and under the conditions and pro- <sup>Warranted.</sup> visions above specified, the said A BINDS and OBLIGES himself to warrant to the said B and his foresaids: FOR WHICH CAUSES, AND <sup>Rent.</sup> ON THE OTHER PART, the said B BINDS and OBLIGES himself, his heirs, executors, and successors, to pay to the said A, and his heirs, executors, and successors whomsoever, a yearly rent of £ sterling, payable on the 1st day of August in each year, commencing the first payment on the 1st day of August, 19   , for the year from 15th May 19    to 15th May 19    (*or the rent may be payable at such terms as may be arranged*), and so forth yearly during the whole currency of this lease; PROVIDED that if the lease shall be terminated after the in any year, the full rent for that year shall be payable, under deduction of the sum of £                      for the value of the unexpired portion of that year's occupation of the said mansion-house, garden, and others: AND the said B further BINDS and OBLIGES himself and <sup>Taxes.</sup> his foresaids to pay such taxes and public burdens as by law fall on the tenants of heritages in Scotland; as also one-half of the pre- <sup>Insurance.</sup>

miums of fire insurance that may be paid by the proprietor on the mansion-house and buildings, and the furniture, and other effects therein: **Furniture.** AND ALSO to take over the furniture and other household plenishing, pictures, and books, according to inventory, and to maintain and keep the same in good order, and to redeliver the same at the termination of this lease (whenever that may take place) in the like good order, or to pay the estimated damage that any articles may have sustained, as the same shall be fixed by a duly qualified appraiser, or to repair any article missing or damaged, if that be possible; **Upholding of building, &c.** AND the proprietor binds himself to maintain the buildings and roofs thereof wind and water tight; but all plumber-work required in the house shall be done at the expense of the tenant, unless the necessity therefor arise from failure by natural decay [**Boats.** AND it is further AGREED that the tenant shall have the use of boats on the river, and on each of the lochs, which boats he shall be bound to maintain and redeliver in as good a condition as that in which he received them, fair tear and wear alone excepted, or to supply others of equal value in their place, at the expiry of this lease]: **Stock of game.** AND the said B shall not unduly increase the stock of game on the low land and arable parts of the said estate, and in the event of his so doing, and claims of damage by the agricultural tenants in consequence thereof against the proprietor being made and sustained either in a court of law or by arbitration, the said B and his foresaids shall be bound to relieve the proprietor thereof, and of all expenses connected therewith<sup>(a)</sup>; and in like manner he shall not unduly reduce the stock of game as it at present exists, but shall shoot and kill the same in a fair and sportsmanlike manner, and leave a fair average stock of game on all parts of the estate at the termination of the lease, unless the failure to do so shall be the result of disease or other natural causes over which he had no control; and in the event of the tenant failing to comply with this condition, the loss and damage to the proprietor and the game on the said estates shall be ascertained and fixed by arbiters to be mutually chosen, or by an oversman in the event of their differing in opinion; AND the said B, when not residing in the said mansion-house, shall leave suitable servants to take charge of the same, and of the offices attached thereto, and

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<sup>(a)</sup> The tenant is frequently specially taken bound to keep down the rabbits and to settle with the agricultural tenants for all claims for damages caused thereby. See also the Agricultural Holdings Act, 1906.

shall keep the house properly heated and aired to prevent damp and injury to the furniture, pictures, books, and others therein: AND the Removal. said B BINDS and OBLIGES himself and his foresaids at the expiry of this lease, or if terminated in manner above specified, at the date of such termination, to remove himself, his servants, and effects from the whole subjects hereby let, without any warning or process of removing; AND the parties hereto BIND and OBLIGE themselves to Penalty. implement and perform their respective parts of the premises to each other under the penalty of £ , to be paid by the party failing to the party performing or willing to perform over and above performance: AND both parties consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

#### 6. Lease of Mansion-House and Deer Forest.

IT is CONTRACTED and AGREED, between the parties following—viz, A (*designation*), heritable proprietor of the subjects after-mentioned, *on the one part*, and B (*designation*), *on the other part*, in manner following: THAT IS TO SAY, the said A, IN CONSIDERATION OF the rent and other prestations after-mentioned, hereby LETS to the said B and his heirs, but expressly excluding assignees, legal or conventional, and all sub-tenants, unless such as may be approved of by the proprietor in writing, and declaring that the subjects hereby let shall not be sub-let or assigned in separate portions, ALL AND WHOLE Description. the sole and exclusive right and privilege of sporting and shooting deer and game of every description, and the sole and exclusive right of fishing in the lochs, rivers, and bays (so far as such right pertains to the said A), in ALL AND WHOLE the lands, estate, and forest of C, lying in the Parish of E and County of F, all as presently occupied and possessed by : DECLARING that during this lease no part of the ground at present cleared shall be put under sheep, nor shall more sheep be kept than the present average; AS ALSO the mansion-house of C (under reservation of a room for storing furniture, and one Mansion-house. wine-cellar), and the stables, offices, policies, gardens, vineries, hot-houses, and whole pertinents thereof, and the lodge at G, with the furniture in the said mansion-house, including blankets and bedding, and the furniture in the lodge, as well as the boats (both luggage- Boats, &c. boats and pleasure-boats) and fishing-nets belonging to the said A, all which shall be in good order and repair, together with the right Keepers, &c.

to command the sole and exclusive services of the gamekeepers, foresters, stalkers, and gardeners at present on the estate, whose wages shall be paid by the said A, and also the services of the present housekeeper and housemaid during the period when the said B shall not be in the occupation of the mansion-house, but the housekeeper shall leave the house and reside elsewhere during the period of his occupation: DECLARING that the said A shall be bound on reasonable cause shown by the said B or his foresaids to dismiss any of the said servants and replace them by others agreeable to and approved by the said B or his foresaids, which other servants shall in like manner be paid by the said A at a rate of wages not less nor more than the wages of those whom they replace; TOGETHER ALSO with the right to the produce of the gardens, which shall be fully and fairly stocked by the said A previous to the entry of the said B, and which the said B shall be bound to stock and labour during his tenancy, and to leave fully and fairly stocked at his outgoing from the premises under these presents, the said B supplying coal for the whole houses, including hothouses and vineries; and that for the space of \_\_\_\_\_ years from \_\_\_\_\_ 19 to \_\_\_\_\_ 19 : AND FURTHER, the said A shall be bound to keep the said mansion-house, stable, offices, and others, and also the said lodge, wind and water tight during this lease, and to pay the whole taxes effeiring to the said subjects (both for owner and occupier), and the taxes for the keepers, watchers, and other servants: WHICH LEASE the said A BINDS and OBLIGES himself, his heirs and successors, to warrant to the said B and his foresaids at all hands: FOR WHICH CAUSES, AND ON THE OTHER PART, the said B BINDS and OBLIGES himself, his heirs, executors, and successors, to make payment to the said A and his heirs and successors in the said estate of C and others, of the sum of £ \_\_\_\_\_ sterling in name of yearly rent or tack duty, and that on the \_\_\_\_\_ day of \_\_\_\_\_ in each year, beginning the first payment thereof on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, for the period from \_\_\_\_\_ 19 to \_\_\_\_\_ 19, and the next payment on the \_\_\_\_\_ day of \_\_\_\_\_ 19, and so forth yearly, termly, and continually during this lease, with a fifth part more of each yearly payment of liquidate penalty in case of failure, and interest of each of said yearly payments at the rate of £5 per centum per annum from the date when the same falls due until payment thereof: AND FURTHER, the said B BINDS and OBLIGES

himself and his foresaids to shoot over and use the said forest, shootings, lands, grounds, and fishings, in a fair and sportsmanlike manner, and constantly to keep on the ground, and at his outgoing to leave thereon, a fair and sufficient breeding stock; AND IN PARTICULAR, <sup>Manner of shooting.</sup> he BINDS and OBLIGES himself and his foresaids not to shoot on an average more than           stags and           hinds in any one year, with the understanding that it is left to the discretion of the said B to shoot a less number if it be for the good of the forest: AND <sup>Produce from farm.</sup> FURTHER DECLARING, as it is hereby DECLARED and AGREED, that the said A shall be bound to supply the said B and his foresaids from the home farm at C with beef, mutton, poultry, eggs, milk, and dairy produce, corn and forage (so far as the resources of the said farm permit), at the current market prices of the town of           , and also with straw for his horses, in exchange for which the dung made therefrom shall be given for the garden so far as required, and the rest for the farm, both free of charge: AND FURTHER, the said <sup>Landlord to keep up gardens, &c.</sup> A hereby BINDS himself and his foresaids to keep up the whole gardens, pleasure-grounds, walks, paths in the forest, bridges, fences, and wire-fences in good order, and in the same style as at present during the currency of this lease: AND the said B BINDS and OBLIGES himself to take over the furniture in said mansion-house and lodge, and the said boats and the nets or other gear for fishing, conform to <sup>Furniture.</sup> an inventory to be subscribed by him and the said proprietor, or by other persons deputed by them respectively as relative hereto, at the said B's entry, and to maintain the same during his tenancy, and to return and redeliver the same at his outgoing in good order and repair (fair tear and wear alone excepted); and to repair or replace any articles that may be damaged or destroyed, or to pay the value thereof, as the same may be fixed by a duly qualified licensed appraiser, and also to paint the boats once a-year: AND FURTHER, <sup>Repair of houses, &c.</sup> the said B BINDS and OBLIGES himself and his foresaids to keep and leave the said mansion-house, stables, offices, lodge, and others (except the outer walls and roof) in good order and repair: AND it is hereby <sup>Pasture.</sup> AGREED that the said B shall be entitled to pasture           ponies in a convenient park or enclosure, as may be arranged, during the summer, and to winter them in the forest: AND LASTLY, the said <sup>Removal.</sup> B BINDS and OBLIGES himself and his foresaids to remove with his or their servants and others from the possession of the subjects hereby let at the expiry of this lease, without any previous warning

Penalty. or process of law: AND both parties BIND and OBLIGE themselves and their foresaids to perform their respective parts of the premises to each other under the penalty of £     to be paid by the party failing to the party performing or willing to perform the same over and above performance; AND they consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

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## SECTION VI

### SUB-LEASES, ASSIGNATIONS, AND RENUNCIATIONS

#### 1. Sub-lease.

A sub-lease has all the legal effects of a principal lease; it requires the same solemnities; and must, in the various regulations and conditions binding on the tenant, agree with the principal lease. The landlord still retains the security of the principal tenant for the rent, and all the obligations and restrictions of the principal lease will be equally effectual against the sub-tenant as against him, so far as applicable to the subjects of the sub-lease.

IT IS CONTRACTED and AGREED between A (*designation*), tenant of the lands and others after-mentioned, *on the one part*, and B (*designation*), *on the other part*, in manner following: THAT IS TO SAY, the said A, IN CONSIDERATION OF the rent and other prestations after written, and under the conditions, reservations, and obligations after specified or referred to, hereby SUB-LETS to the said B and his heirs, ALL AND WHOLE [*here describe subjects*], belonging to E (*designation*), situated in the Parish of X and County of Y, and that

Subjects. for the space of     years (being the remaining years still to run of the lease of the said subjects after-mentioned, under which the said A presently possesses the same), from and after the entry of the said B, which is hereby declared to be at the term of     , 19     , but always with and under the several reservations, conditions, provisions, and declarations particularly specified and contained in the lease of the foresaid subjects entered into between the said E, as proprietor thereof, and the said A, dated the     day of     , to which lease reference is hereby expressly made, and of which a copy [*or a duplicate*] is herewith delivered up by the said

Term. A to the said B as relative hereto: WHICH SUB-LEASE, with and under the reservations, conditions, provisions, and declarations before and

Warrandice.

after written or referred to, the said A BINDS and OBLIGES himself, his heirs and successors, to warrant to the said B and his foresaids at all hands : FOR WHICH CAUSES, AND ON THE OTHER PART, the said B <sup>Rent.</sup> hereby BINDS and OBLIGES himself and his heirs, executors, and successors whomsoever, to pay to the said A and his foresaids yearly during the currency of this sub-lease the sum of £                      sterling in name of rent or sub-tack duty, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said rent at the term of Whitsunday                      , and the next term's payment thereof at the term of Martinmas thereafter, and that for crop and year                      , and so forth half-yearly and termly thereafter during the currency of this sub-lease, with a fifth part more of each term's payment of liquidate penalty in case of failure in the punctual payment of the said rent, and the interest of the said termly payments at the rate of 5 per centum per annum from the time the same shall respectively become due until payment of the same ; AND FURTHER, the said B hereby accepts of the whole houses, buildings, fences, and others on the said subjects, in the state they are in at present, as in a good and sufficient tenantable and habitable condition ; and BINDS and OBLIGES himself and his foresaids to maintain and uphold the same in like good order and condition during the currency of this sub-lease, and to leave the same in a good habitable and sufficient condition at the expiry hereof, as more fully specified and contained in the foresaid original lease : AND <sup>Obligations under principal lease.</sup> FURTHER, the said B hereby BINDS and OBLIGES himself and his foresaids, to implement, fulfil, and perform the whole other stipulations, prestations, and obligations incumbent upon the tenant specified and contained in the foresaid original lease of the subjects, which are here held as repeated *brevitatis causa*, excepting the payment of the rent or tack duty due by the said A to the proprietor of the foresaid subjects, which it is hereby declared is to be payable by the said A and his foresaids : AND the said A hereby ASSIGNS to the said B and his foresaids the whole obligations and stipulations conceived in favour of the tenant incumbent upon the proprietor of the foresaid subjects, specified and contained in the foresaid original lease, so far as regards the subjects hereby let, and so far as these have not already been implemented and fulfilled : AND LASTLY, both parties <sup>Penalty.</sup> BIND and OBLIGE themselves and their foresaids to implement and fulfil their respective parts of the premises, under the penalty of

In sub-leases the proprietor may be a party and consent to the sub-lease; and in that case the grounds or conditions of his doing so should be clearly expressed—*e.g.*, that the rent payable by the sub-tenant shall be paid to the proprietor, to the extent of the rent specified in the original lease, and that the principal tenant shall remain bound to him for payment of it; or the landlord may declare the principal tenant free, and take the sub-tenant bound for payment of the rent payable to him by the principal lease. The same observation will apply to assignments of leases where the proprietor is a party.

In ordinary leases there is implied a *delectus personarum*, and consequently tenants are prohibited from granting assignments where power is not given in the lease to assign, or where assignees are expressly excluded, except in the special cases mentioned in the introductory observations to the present title; for by an assignment the original tenant is entirely divested of the right of possession, and ceases to have any connection whatever with the proprietor, to whom the assignee becomes tenant, and is the proper debtor for the rent. An assignment has thus a different effect from a sub-lease; in which latter case, as already mentioned, the original tenant still continues bound to the landlord, and is liable to fulfil the whole obligations of the lease.

I, B (*designation*), CONSIDERING that by Lease dated \_\_\_\_\_, entered into between A (*designation*), *on the one part*, and me, the said B, *on the other part*, the said A LET, to me, my heirs, and assignees, ALL AND WHOLE (*here take in description of the subjects as contained in the principal Lease*), and that for the space of \_\_\_\_\_ years from and after my entry thereto, which was thereby declared to have been at the term of \_\_\_\_\_ : FOR which causes, and on the other part, I thereby bound and obliged myself, my heirs, executors, and successors, to content and pay to the said A, his heirs, and assignees, yearly during the currency of the lease the sum of £ \_\_\_\_\_ in name of rent, at two terms in the year, \_\_\_\_\_ and \_\_\_\_\_, by equal portions, beginning the first term's payment thereof at \_\_\_\_\_, and the next term's payment thereof at \_\_\_\_\_ thereafter, and so forth

yearly and termly thereafter during the currency of the foresaid lease, and to perform certain other prestations therein specified, as the said lease, containing an obligation on me to remove without warning at the expiry thereof, and other clauses, in itself more fully bears: AND NOW SEEING that C (*designation*) has made payment to me of the sum of £        for and in consideration of my granting the Assignment under-written, of which sum I hereby acknowledge the receipt, and discharge the said C, THEREFORE I do hereby ASSIGN, and MAKE OVER to the said C, his heirs and assignees, my right and interest in and to the said lease during the whole years and terms thereof yet to run, and in and to all the clauses and obligations therein contained, and profits and emoluments which may arise therefrom, and in and to all action and execution competent to me thereupon, from and after the term of        , 19        : WITH power to the said C and his foresaids to occupy and possess the said subjects or to let the same to tenants as they shall think expedient, and to intromit with and uplift the rents, profits, and duties thereof] during the said remaining space of the foresaid lease: Surrogating and substituting the said C and his foresaids, in my full right and place of the premises for ever, with full power to him and them to do everything requisite and necessary concerning the premises which I could have done myself before granting hereof: PROVIDED ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that the said C and his foresaids shall be bound and obliged, as he by his signature hereto BINDS and OBLIGES himself and his foresaids, to make payment to the said A and his foresaids of the whole rents and tack duties stipulated by the lease above narrated, to be paid by me and my foresaids for the said subjects: AND ALSO to perform, implement, and fulfil the whole other obligations and prestations incumbent upon me by the said lease, and that yearly during the whole space yet to run of the said lease, at the terms and periods respectively therein specified: AND having paid up all the rents due by me, and performed the whole obligations incumbent on me previous to the term of the said C's entry to the said lands, I hereby BIND and OBLIGE myself and my foresaids to warrant to the said C and his foresaids the Assignment above written from all facts or deeds done or to be done by me in prejudice hereof; and I have herewith delivered up to the said C a duplicate (*or a copy, as the case may be*) of the principal lease

above mentioned, to be kept and used by him and his foresaids as their own proper writ and evident in time coming: AND I, the said B, and I, the said C respectively, consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

Where the granter of the assignation has himself acquired a right to the Lease by Assignation from the original tenant or his assignee, the narrative will run as follows:—

I, M (*designation*), CONSIDERING that by lease dated entered into between A (*designation*), *on the one part*, and B (*designation*), *on the other part*, the said A LET to the said B, his heirs, and assignees, ALL AND WHOLE (*here take in description of subjects from principal tack*), and that for the space of years from and after his entry thereto, which was thereby declared to have been at the term of : for which causes, and on the other part, the said B thereby bound and obliged himself, his heirs, executors, and successors, to content and pay to the said A, his heirs, and assignees, yearly during the currency of the lease the sum of £ in name of rent, at two terms in the year, and , by equal portions, beginning the first term's payment thereof at , and the next term's payment thereof at thereafter, and so forth yearly and termly thereafter during the currency of the foresaid lease, and to perform certain other prestations therein specified, as the said lease containing an obligation on the said B and his foresaids to remove without warning at the expiry thereof, and other clauses, in itself more fully bears: TO WHICH LEASE I acquired right in virtue of the following transmissions, viz.:—*Primo*, Assignation of said lease by the said B to D (*designation*) and his heirs and assignees, dated ; *Secundo*, Assignation and translation of said lease by the said D to E (*designation*), dated ; *Tertio*, Assignation and translation of said lease by the said E to me, the said M, dated : AND NOW SEEING (*as in former example, mutatis mutandis*).

### 3. Renunciation of Lease.

A lease may be terminated before the expiry of the period specified in it, by a written renunciation executed by the tenant and accepted of by the

proprietor, whose acceptance should be ascertained by a writing under his hand.

I, B (*designation*), tenant of the farm of M, in the County of N, CONSIDERING that by lease or tack dated \_\_\_\_\_, entered into between A (*designation*), *on the one part*, and me, *on the other part*, the said A LET to me the said farm and lands of M for the period of \_\_\_\_\_ years from the term of \_\_\_\_\_, and that I thereby became bound to pay the rent and perform the conditions and stipulations therein contained, and that it has been arranged that I shall renounce all right of possession of the said farm and lands competent to me under the said lease for the whole remaining years thereof, from and after the term of \_\_\_\_\_, and that the said A has agreed to accept of such renunciation on the conditions after written: THEREFORE I DO hereby RENOUNCE to and in favour of the said A, his heirs and successors, the foresaid lease, and all right, title, and interest therein, and to the lands and others thereby let, and generally all claims, interest, and advantage which I have or might pretend to in or under the said lease, and that as at the said term of \_\_\_\_\_, it being hereby specially agreed (*here insert special agreements*): AND I BIND and OBLIGE myself, my heirs, and successors, to flit and remove ourselves, families, servants, and dependants, and all goods and gear belonging to us, furth of and from the same at the said term of \_\_\_\_\_, and to leave the same void and redd, to the effect that the said A or his foresaids may then occupy, possess, and let or otherwise dispose of the same at pleasure: PROVIDING ALWAYS that the said A by his acceptance hereof discharges me and my foresaids of the whole rents and prestations incumbent on me by the said lease: AND I consent to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

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## SECTION VII

### LONG LEASES AND TRANSMISSIONS THEREOF

“The Registration of Leases (Scotland) Act, 1857,” first enabled the possessor under a long lease to give to a creditor a valid security over the leasehold subject, and to maintain his right in any question with a singular successor of his landlord, though he had not entered into actual possession of the subject leased. This it effects by allowing the lease to

be recorded for publication in the Register of Sasines. Under the law as it stood prior to the above-mentioned Act, actual possession was the criterion of preference in all questions relating to the tenant's right. It was essential, as has been seen, under the Act of 1449, that the tenant should have entered on possession if he were to succeed in defending his right against a singular successor. The right of an assignee or sub-lessee, moreover, was preferred, according to the priority of possession, not according to the priority of the dates of their respective rights. It followed from this that no effectual security could be given to a creditor without his entering into possession; and this might be either impracticable, or, in consequence of the terms of the lease, illegal.

The Act of 1857 now, however, confers on the tenants under all leases possessing the statutory requisites privileges equivalent, at least so far as the difference in the actual character of their rights admits, to those of absolute feudal proprietors.

The requisites of leases entitling the possessor to these privileges are—  
(1.) The lease must be probative—i.e., must be authenticated by the legal formalities of execution.

(2.) The period of duration must not be less than thirty-one years (sec. 1).

By section 17 of the Act, it is also provided that "leases containing an obligation upon the grantor to renew the same from time to time at fixed periods, or upon the termination of a life or lives, or otherwise, shall be deemed leases within the meaning of this Act, and registerable as such, provided such leases shall, by the terms of such obligation, be renewable from time to time, so as to endure for a period of thirty-one years or upwards."

A lease for a single life would probably not fulfil the requirements of this section, nor is it clear that these would be fulfilled by a lease renewable for a succession of two or more lives, until it had been seen by its actual endurance for thirty-one years that such obligation to renew was in fact equivalent to a lease for the specified period. The result cannot be more definitely stated than, in the language of Professor Bell, the lease "must be *actually* or *practically* for a period of not less than thirty-one years."

(3.) The registration of the lease must take place at or subsequent to the term of entry (sec. 2).

(4.) In the case of all leases dated subsequent to the passing of the Act (10th August, 1857), unless executed in terms of an obligation to renew contained in a lease granted prior to that date, and unless of subjects held by burghage tenure, the *name* of the lands of which the leasehold is a part must be set forth (sec. 18).

(5.) Except in cases of mines or minerals and of lands held burghage, the extent of the land let must be set forth, and must not exceed fifty acres (sec. 18).

But leases granted prior to the passing of the Act, or in implement of an obligation to renew contained in a lease of such prior date, do not fall under these two last requirements.

From the general scope of the Act, and particularly the provision in section 7 as to the completion of an heir's title by writ of acknowledgment, it would appear that only leases by feudal proprietors are contemplated. If that be so, it is at least doubtful whether it is competent, though the practice is common, to record sub-leases.

Long leaseholds are usually adopted where the parties have objects in view similar to those intended to be secured by the ordinary feu-charters or feu-contracts for building purposes. The clauses therefore, of which we have already given examples in the first Title of this volume, may be easily adapted to a long lease, the conveyancer, of course, keeping in view throughout the difference in the character of the deed. The following Style, however, contains variations on these clauses, which will probably be found more suitable to the less permanent character of the rights conferred, and the less expensive nature of the buildings usually contemplated in the rural or quasi-rural localities where the long lease is chiefly used.

**1. Lease for 999 Years, with a Break in favour of the Landlord at the end of every 99 Years.**

19           , which is hereby declared to be the tenant's entry to the subjects hereby leased: BUT DECLARING ALWAYS that notwithstanding the above term of endurance the landlord shall have full Reservation of a break in favour of landlord.

**Description.**

### **Endurance.**

**Reservation  
of a break  
in favour of  
landlord.**

power and liberty to put an end to this lease, and to remove the tenant from the said subjects at the end of every ninety-nine years thereof, on premonition duly given six months before the expiry of the period at which such removal is to take place, by registered letter from the landlord or his agent, addressed and posted to the tenant at his last known place of residence: AND in case the landlord shall take advantage of such break (but in that case only), he shall be bound to pay the tenant the value of the whole buildings or erections on the premises as the same shall be determined by two arbiters, one to be named by the landlord and another by the tenant, or by an oversman to be appointed by said arbiters in case of their differing in opinion: (a) AND DECLARING FURTHER, that the said subjects are hereby let under the further conditions, provisions, and restrictions hereinafter specified: WHICH LEASE the said A BINDS himself and his foresaids, under the reservations, conditions, and others before and after expressed, to warrant to the said B and his foresaids at all hands: FOR WHICH CAUSES, AND ON THE OTHER PART, the said B BINDS himself and his foresaids to pay the yearly rent and to implement and perform the whole other conditions and provisions following—viz. (*First*), To pay to the said A and his foresaids the sum of £                      yearly of rent or tack duty for the ground hereby leased, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, commencing the first term's payment at                      next for the half-year preceding, and the next term's payment at                      following, and so forth half-yearly and continually thereafter at the said two terms in the year during the whole currency of this lease; with a fifth part more of each term's payment of liquidate penalty in case of failure in the punctual payment thereof, and the interest of each term's payment at the rate of 5 per centum per annum during the not-payment thereof: (*Second*), To erect on the area of ground hereby leased, and that within twelve months from the date hereof, a substantial dwelling-house or cottage, of one storey, of stone and lime, with slated roof, fronting the road or street bounding the said area on the                      , and of the value of at least £                      sterling, which dwelling-house shall be erected within or on the space delineated and coloured                      on the plan hereto annexed, and shall be erected according to plans

Warranties

Tenant's obligations and conditions of the lease.

(1.) Rent.

(2.) To build,

(a) It is sometimes useful to fix and determine the principle of valuation which the arbiters are to adopt.

to be submitted to and approved of in writing by the landlord before the erection is proceeded with; and to maintain the said house in good and tenantable condition and repair, and insured against loss by fire with a respectable Insurance Company for at least £

and main-  
tain and  
insure  
buildings.

sterling during the whole currency of this lease: (*Third*), To form and thereafter maintain at his own expense a footpath of at least

(3.) To  
construct  
footpath.

feet in breadth along the

boundary of the

said road or street fronting the area of ground hereby leased, with a sufficient curb-stone and water-channel, and when required, to pave the said footpath with

or other flagstones to the

satisfaction of the landlord; the said footpath to be formed entirely on the area of ground hereby leased, the same being included in the measurements before expressed: (*Fourth*), To construct and main-

(4.) To  
construct  
drain.

tain at his own expense a drain or sewer connected with and carrying the drainage of the subjects hereby leased into the main drain constructed by the said A along the centre of the foreshaid road or street; and to pay to the said A and his foreshaids, within six months after the term of entry herein stipulated, the sum of £

sterling, being the proportion corresponding to the frontage of the subjects hereby leased, of the expense incurred by the said A in constructing the said main drain, and thereafter to pay a like proportion along with the other proprietors or lessees draining into said main drain, of the expense of maintaining the same in proper condition and repair: (*Fifth*), To erect so far as not

(5.) To  
enclose.

already erected on the boundaries of the area of ground hereby leased, a substantial wall of stone and lime, with semicircular dressed coping, and not less than

feet in height, which

wall shall be erected to the extent of one-half the breadth thereof on the area of ground hereby leased, and to the extent of the other half on the ground adjoining belonging to the landlord or his lessees, which wall shall be mutual to the said B and his foreshaids, and to the proprietor or lessee of the adjoining ground, and the said B and his foreshaids shall be entitled, on the ground adjoining being leased, sold, or otherwise disposed of by the said A or his foreshaids, to receive half the expense of erecting the same from the person or persons to whom such adjoining ground shall be leased or conveyed; and the said wall shall thereafter be maintained at the mutual expense of the said B and his foreshaids and the adjoining proprietors or lessees: BUT the said B shall not be entitled, so long

(6.) Mode of occupation.

(7.) To relieve landlord of public burdens.

(8.) To remove.

Irritancy.

Penalty clause.

as such adjoining ground is in the occupancy of the said A and his foresaids, to any portion of the expense of erecting and maintaining the same: (*Sixth*), To occupy the subjects leased solely as a dwelling-house and gardens and offices connected therewith, and not to use the subjects in any way or apply them to any purpose which may be a source of nuisance or discomfort to the neighbouring properties or the occupants thereof, and in particular and without prejudice to the foregoing generality the said B and his foresaids shall not erect on the ground hereby leased any piggery, cow-house, or stables, without the written consent of the landlord and of the immediately adjoining proprietors or lessees, previously had and obtained: (*Seventh*) To relieve the landlord of all public and parochial burdens imposed, or to be imposed on the subjects hereby leased from and after the said term of entry: (*Eighth*), To flit and remove from the subjects hereby let at the expiry of this lease, and that without any warning or process of removal to that effect: AND it is hereby further DECLARED that if the said B or his foresaids shall at any time during the currency of this lease allow two years' rent to run into a third unpaid, or shall in any other respect fail to implement or shall contravene any of the conditions, provisions, and restrictions hereinbefore contained, then and in any of these events the said B and his foresaids shall forfeit all right and title under these presents, and the lease hereby granted and all transmissions thereof, with all that has followed or can competently follow thereupon, shall become *ipso facto* void and null, and that without the necessity of any declarator, process of removal, or other procedure at law, and the said subjects shall thereupon revert to the landlord, who shall be entitled to enter upon the possession thereof, uplift rents, eject tenants and occupiers, and thereafter use, possess, and enjoy the same, free of all claims by the said B or his foresaids, in the same manner and to the same extent and effect as if these presents had never been granted: WHICH irritancy is hereby declared to be pactional and not penal and shall not be purgeable at the bar: AND both parties BIND themselves and their respective foresaids to implement and perform the whole of their respective parts of the premises to each other under the penalty of £                      sterling, to be paid by the party failing to the party performing or willing to perform, and that over and above performance: AND both parties consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

The lessee will complete his right by registration of the lease in the appropriate Register of Sasines, with a warrant of registration in the usual form.

Extracts also, of any lease recorded, for preservation before the passing of the Act (10th August, 1857), in the Books of Council and Session, or in the Books of any Sheriff, Commissary, or Burgh Court, may be recorded in the Register of Sasines, on being presented with the usual warrant of registration. See section 19 of the Registration of Leases Act, as amended by section 1 of the Act 40 & 41 Vict. c. 36.

## 2. Building Lease on Entailed Estate under Montgomery Act.

IT IS CONTRACTED and AGREED upon between A, proprietor, *qua* heir of entail in possession of the portion of land after-mentioned, *on the one part*, and B, *on the other part*, in manner following: THAT IS TO SAY, the said parties considering that by the Act of Parliament 10 George the Third, chapter 51, every proprietor of an entailed estate in Scotland may grant leases of land for the purpose of building, subject to the provisions of the said Act: THEREFORE the said A has SET and hereby LETS to the said B, and his heirs, but subject to the declaration after-written and expressly excluding, unless with the written consent of the landlord, sub-tenants, and all assignees, legal or voluntary, ALL AND WHOLE, that plot or piece of ground, *Subjects.* part of the entailed estate of C (*describe it, giving extent and boundaries*): RESERVING to the landlord all mines, metals, minerals, *Reservations.* coals, quarries of stone and lime, gravel, clay, marl, and all fossils of every kind within the said plot or piece of ground hereby leased with full power to search for, work, by longwall or other workings, win, calcine, manufacture, and carry away the same at pleasure, and to sink bores and pits, make ponds, aqueducts, roads and railroads, and to erect and construct buildings and other works all as he may think proper, and whatever damage the tenant shall sustain by the exercise of the said reserved powers (other than damage caused by present or future underground workings for which the landlord shall incur no liability), the landlord shall be bound to pay the same, as the amount thereof shall be ascertained by two neutral men to be mutually chosen, or in case of their differing in opinion by an oversman to be named by such neutral men: WHICH TACK the said A obliges himself and the *Warrandice.* heir of tailzie succeeding to him in the said lands to warrant at all hands and against all mortals: FOR WHICH CAUSES, AND ON THE

(6.) Mode of occupation.

(7.) To relieve landlord of public burdens.

(8.) To remove.

Irritancy.

Penalty clause.

as such adjoining ground is in the occupancy of the said A and his foresaids, to any portion of the expense of erecting and maintaining the same: (*Sixth*), To occupy the subjects leased solely as a dwelling-house and gardens and offices connected therewith, and not to use the subjects in any way or apply them to any purpose which may be a source of nuisance or discomfort to the neighbouring properties or the occupants thereof, and in particular and without prejudice to the foregoing generality the said B and his foresaids shall not erect on the ground hereby leased any piggery, cow-house, or stables, without the written consent of the landlord and of the immediately adjoining proprietors or lessees, previously had and obtained: (*Seventh*) To relieve the landlord of all public and parochial burdens imposed, or to be imposed on the subjects hereby leased from and after the said term of entry: (*Eighth*), To flit and remove from the subjects hereby let at the expiry of this lease, and that without any warning or process of removal to that effect: AND it is hereby further DECLARED that if the said B or his foresaids shall at any time during the currency of this lease allow two years' rent to run into a third unpaid, or shall in any other respect fail to implement or shall contravene any of the conditions, provisions, and restrictions hereinbefore contained, then and in any of these events the said B and his foresaids shall forfeit all right and title under these presents, and the lease hereby granted and all transmissions thereof, with all that has followed or can competently follow thereupon, shall become *ipso facto* void and null, and that without the necessity of any declarator, process of removal, or other procedure at law, and the said subjects shall thereupon revert to the landlord, who shall be entitled to enter upon the possession thereof, uplift rents, eject tenants and occupiers, and thereafter use, possess, and enjoy the same, free of all claims by the said B or his foresaids, in the same manner and to the same extent and effect as if these presents had never been granted: WHICH irritancy is hereby declared to be pactional and not penal and shall not be purgeable at the bar: AND both parties BIND themselves and their respective foresaids to implement and perform the whole of their respective parts of the premises to each other under the penalty of £                      sterling, to be paid by the party failing to the party performing or willing to perform, and that over and above performance: AND both parties consent to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

The lessee will complete his right by registration of the lease in the appropriate Register of Sasines, with a warrant of registration in the usual form.

Extracts also, of any lease recorded, for preservation before the passing of the Act (10th August, 1857), in the Books of Council and Session, or in the Books of any Sheriff, Commissary, or Burgh Court, may be recorded in the Register of Sasines, on being presented with the usual warrant of registration. See section 19 of the Registration of Leases Act, as amended by section 1 of the Act 40 & 41 Vict. c. 36.

## 2. Building Lease on Entailed Estate under Montgomery Act.

IT IS CONTRACTED and AGREED upon between A, proprietor, *qua* heir of entail in possession of the portion of land after-mentioned, *on the one part*, and B, *on the other part*, in manner following: THAT IS TO SAY, the said parties considering that by the Act of Parliament 10 George the Third, chapter 51, every proprietor of an entailed estate in Scotland may grant leases of land for the purpose of building, subject to the provisions of the said Act: THEREFORE the said A has SET and hereby LETS to the said B, and his heirs, but subject to the declaration after-written and expressly excluding, unless with the written consent of the landlord, sub-tenants, and all assignees, legal or voluntary, ALL AND WHOLE, that plot or piece of ground, Subjects. part of the entailed estate of C (*describe it, giving extent and boundaries*): RESERVING to the landlord all mines, metals, minerals, Reservations. coals, quarries of stone and lime, gravel, clay, marl, and all fossils of every kind within the said plot or piece of ground hereby leased with full power to search for, work, by longwall or other workings, win, calcine, manufacture, and carry away the same at pleasure, and to sink bores and pits, make ponds, aqueducts, roads and railroads, and to erect and construct buildings and other works all as he may think proper, and whatever damage the tenant shall sustain by the exercise of the said reserved powers (other than damage caused by present or future underground workings for which the landlord shall incur no liability), the landlord shall be bound to pay the same, as the amount thereof shall be ascertained by two neutral men to be mutually chosen, or in case of their differing in opinion by an oversman to be named by such neutral men: WHICH TACK the said A obliges himself and the Warrandice. heir of tailzie succeeding to him in the said lands to warrant at all hands and against all mortals: FOR WHICH CAUSES, AND ON THE

**Rent.** OTHER PART, the said B obliges himself and his heirs, executors, and successors whomsoever to pay to the said A and his foresaids the yearly rent or tack duty of                      pounds sterling, at the term of Whitsunday in each year, beginning the first term's payment thereof at the term of Whitsunday                      , for the year preceding that term, and so forth yearly thereafter during the currency of this lease, with a fifth part more of each year's payment of liquidate penalty in case of failure in the due and punctual payment thereof, and the interest of the said rent at the rate of £7 per centum per annum from each term when the said rent becomes due until paid, and that at the office of the factor or the said entailed estate of C, or wherever else the same may be for the time, without the necessity of any demand being made therefor on the part of the landlord: **Irritancy.** DECLARING that if at any time two years' rent together shall be unpaid, these presents shall *ipso facto* become void and null without the necessity of any declarator or other process of law whatever, and it shall be in the power of the landlord to resume possession of the said plot or piece of ground and all buildings and erections thereon in the same way in every respect as if this lease had actually expired: **Public burdens.** AND the tenant BINDS and OBLIGES himself and his foresaids as aforesaid to pay and so free and relieve the landlord of all public and parish or local burdens and other assessments imposed or to be imposed in respect of the plot or piece of ground hereby let, and buildings that may at any time be thereon in the same way in every respect as if he, the said tenant, had obtained a feu-right thereof instead of this lease; AND the tenant further obliges himself and his foresaids to erect upon the four sides of the said plot or piece of ground hereby let a suitable wall or fence to the satisfaction of the landlord or his factor, and to keep the same in proper repair during the currency hereof, and leave the same in similar repair at the expiry hereof, all at his, the tenant's, **Lapse.** own expense: AND it is also hereby declared that if upon the death during the currency hereof of the tenant in possession for the time, no person shall lodge with the landlord or his factor within six months from the day of such death, a writing claiming right as heir to this lease, or if the person so claiming right shall fail within six weeks after being required in writing to prove his or her propinquity to the landlord's satisfaction, and also to grant at his or her expense, and in such form as shall be approved of by the landlord, a personal obligation to

pay the rents and fulfil the whole conditions and stipulations prestable from the tenant under these presents, then and in any of these events this lease, if the landlord so chooses, shall *ipso facto* cease and determine, and it shall be in the power of the landlord to enter into possession of the said plot or piece of ground and erections thereon in the same way as if this lease had been granted for the lifetime only of the tenant so dying; AND the said tenant <sup>Removal.</sup> obliges himself and his foresaids to remove from the said premises hereby let at the term of Whitsunday (*insert here year of expiry*) without any legal warning or process of removing being used against them for that effect: MOREOVER, it is hereby declared, in terms of <sup>Building.</sup> the foresaid statute to be a condition of this lease that the same shall be void if one dwelling-house at least, not under the value of £10 sterling, shall not be built within the space of ten years from the date of the lease upon the ground comprehended in the lease, and that the said house shall be kept in good tenantable and sufficient repair, and that the lease shall be void whenever there shall be no dwelling-house of the value aforesaid, kept in such repair as aforesaid, standing upon the ground hereby leased: AND it is also hereby declared, without prejudice to the foregoing obligation, that the dwelling-house and other buildings to be erected by the tenant under these presents upon the said plot or piece of ground shall be of the annual value of not less than £                      sterling (*insert here as a minimum three times the amount of the rent payable under the lease*): AND FURTHER, that the landlord shall have power <sup>Right to landlord to purchase.</sup> at any time during the currency of this lease to purchase this lease, and such house or houses or other buildings as may be built upon the said plot or piece of ground hereby let, at such price as may be fixed by arbiters mutually chosen, or by an oversman to be named by them in case of their differing in opinion, but such price shall in no case exceed the original or first cost of any house or houses or other buildings to be built upon the said piece of ground hereby let: AND it is also hereby provided that the tenant shall lodge with the landlord or his factor within two months from the completion of the buildings to be erected by the tenant as aforesaid, and of his entry to the possession or use thereof, a statement showing the actual cost of erection of the said buildings, and should the said tenant wish to sell or assign this lease, and such house or houses or other buildings, the landlord shall be entitled to the first offer of the same: AND

The Statutory Schedule does not require that the description in the original lease should be repeated word for word in the assignation, but only that the conveyancer should "shortly mention" the subjects. If the full description, however, is not given, the subjects must be clearly identified.

It is unnecessary in such Assignations to set forth the various transmissions by which the granter has acquired right, all that is required being the statement of the date when his title was recorded, and in what register.

### 5. Renunciation of a Recorded Lease. (*Section 13, Schedule (G).*)

I, B (*designation*), RENOUNCE, as from the term of (*state term or date at which the lessee's right is to cease*), in favour of A (*designation of landlord*), a Lease granted by the said A in my favour [*or, if granter is not the original lessee, say, in favour of M (designation)*], of ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, which Lease is dated \_\_\_\_\_, and recorded (*specify Register of Sasines and date of registration*), and (*where the granter of the Renunciation is not the original lessee*) my title to which is recorded in the (*specify Register of Sasines and date of registration*).—IN WITNESS WHEREOF, &c.

The cause of granting should in all cases be stated, and where a price is paid for the Renunciation, the deed should be impressed with *ad valorem* conveyance stamp-duty. In order that the Renunciation may be recorded in the Register of Sasines, it must be granted by the original lessee of a recorded lease, or by an assignee having a recorded title.

The Renunciation may either be endorsed on the Lease or form a separate deed.

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## SECTION VIII

### COMPLETION OF THE TITLE OF ASSIGNEES AND GENERAL DISPONEES OF LONG LEASES

Where the Lease has been recorded, and the granter of the Assignation is either the original lessee, or (if he be not) has a recorded title, the title of the grantee is completed by registration of the Assignation with a warrant of registration on his behalf in the appropriate Register of Sasines.

Where the Lease has not been recorded, the assignee must complete

his title by expeding a Notarial Instrument in the form of Schedule (C) of the Act, setting forth the Lease and the title or series of titles by which he has acquired right to it, either in whole or in part, and thereupon recording the Lease and the Notarial Instrument, with a warrant written on each. Section 5 of the Act does not require that in such case the Notarial Instrument should be docqueted with reference to the Lease, and this is not necessary, though it is a common enough practice following the analogous provisions of the Titles to Land Consolidation Act, 1868, with reference to feudal subjects, to adopt such a docquet.

**1. Notarial Instrument in favour of an Assignee who has acquired right to an Unrecorded Lease, to be recorded along with the Lease. (Sec. 5, Schedule (C), No. 1.)**

BE IT KNOWN that by Lease, dated (*insert date*), A (*designation*), let to B (*designation*), ALL AND WHOLE (*describe shortly the property leased*), being part of the lands of X, in the Parish of Y, and County of Z: To which Lease C (*designation*) has made up title as assignee of the said B in virtue of Assignment, dated , granted by the said B in favour of the said C: WHEREFORE this Instrument is taken by the said C in the hands of G (*designation*), Notary Public, in terms of the Registration of Leases (Scotland) Act, 1857.—IN WITNESS WHEREOF, &c.

**2. Notarial Instrument in favour of an Assignee who has acquired right to an Unrecorded Lease to a partial extent and by a series of Titles, to be recorded along with the Lease. (Sec. 5, Schedule (C), No. 1.)**

BE IT KNOWN that by Lease dated (*insert date*), A (*designation*), let to B (*designation*), ALL AND WHOLE that piece of ground (*shortly describe the property leased*), being part of the lands of X, in the Parish of Y, and County of Z: To which Lease, to the extent after-mentioned, H (*designation*) has made up title as assignee of G (*designation*) in virtue of Assignment dated (*insert date*), whereby the said G assigned to the said H the foreshaid Lease, but in so far only as regards the following portion of the subjects leased—viz. (*here describe the portion*): To which Lease the said G acquired

right (or, acquired right to the extent foresaid, *if that be so*) by the following titles, viz. :—(*First*), Extract Decree of General Service in favour of C (*designation*) as eldest son and nearest and lawful heir in general of the said B obtained before the Sheriff of Chancery (or otherwise, as the case may be), dated \_\_\_\_\_, and recorded in Chancery, the \_\_\_\_\_ day of \_\_\_\_\_ : (*Second*), Trust-Disposition and Settlement, dated the \_\_\_\_\_ day of \_\_\_\_\_, and recorded in the Books of Council and Session the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, executed by the said C, by which Trust-Disposition and Settlement the said C assigned, disposed, and conveyed, devised, legated and bequeathed to and in favour of M, N, and O (*designation*), and the survivors and survivor of them and the heirs of the last survivor All and Sundry the whole means, estate and effects then belonging, or that should belong to him at the date of his death, with the whole vouchers and instructions, writs, titles, and securities thereof, but in trust always for the ends, uses, and purposes therein mentioned : (*Third*), Assignment dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, granted by the said M, N, and O as trustees foresaid in favour of D and E (*designations*), daughters of the said C, and the survivor of them and the heirs and assignees whomsoever of the survivor : and (*Fourth*), Assignment dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, granted by F (*designation*), eldest son and heir of the said E, and as such vested *jure sanguinis* and without service in the right to said Lease, the said E having been predeceased by the said D without issue, in favour of the said G : WHEREFORE, &c. (*as in Style No. 1, p. 575*).

It will be observed that the preceding Style deals with the case, common enough in practice, of an heir intervening who has not completed any title by service, and whom, in consequence of his death or refusal, it may be impossible to serve. The statutory schedule clearly contemplates a service in the case of an heir, whether of the original lessee or of an assignee, completing a title in his own person ; but it is not clear that service is required wherever an heir has intervened in the course of the various transmissions by which the party expediting the notarial instrument acquired right. The note appended to the schedule merely directs the conveyancer to "specify shortly the series of titles by which the "predecessor acquired the right." Service is not required to transmit the right to a lease, and the strict principles of feudal conveyancing are not applicable to a notarial instrument of this kind. It might probably be held, therefore, that where the right is clearly deduced, and the terms of the schedule otherwise complied with, a title completed in the above form is unexceptionable.

**3. Notarial Instrument on a Recorded Lease, in favour of the General Disponees of the Original Lessee.** (*Schedule (F), No. 1.*)

BE IT KNOWN that by Lease, dated                      , 19      , A (*designation*), let to B (*designation*), ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, which lease is recorded in the (*specify Register of Sasines and date of registration*): TO WHICH LEASE M, N, and O (*designations*), have made up title as general trust disponees of the said B, in virtue of a Trust-Disposition and Settlement executed by him on the                      day of                      , 19      , and recorded in the Books of Council and Session (*or otherwise, as the case may be*), on the                      day of                      , 19      , whereby the said B assigned, disponed, and conveyed, legated, devised, and bequeathed, to and in favour of the said M, N, and O, and the survivors and survivor, acceptors and acceptor of them, and to the heir of the last surviving acceptor (*or otherwise, as the case may be, inserting the terms of the destination as in the trust-deed*), ALL AND SUNDRY his whole means, estates, and effects, heritable and moveable, real and personal, then belonging, or that might belong to him at the date of his death, and all that had followed or could competently follow thereon; but that in trust always for the ends, uses, and purposes therein mentioned: WHEREUPON this instrument is taken by the said M, N, and O, in the hands of G (*designation*), Notary Public, in terms of the "Registration of Leases (Scotland) Act, 1857."—IN WITNESS WHEREOF, &c.

If the truster was not the original lessee, but was vested in the lease by assignation recorded in the Register of Sasines, insert the following words immediately after the narrative of the trust-deed in the preceding Style:—"To which lease the said B acquired right by assignation, dated                      , 19      , and recorded (*specify Register of Sasines and date of registration*), granted by C (*designation*), in his favour."

**4. Notarial Instrument in favour of the General Disponees of an Assignee, who acquired right to a partial extent to a Recorded Lease, but who died without completing his Title.** (*Schedule (F), No. 1.*)

BE IT KNOWN that by Lease, dated                      , 19      , A (*designation*), let to B (*designation*), ALL AND WHOLE (*shortly*

*describe the property leased*), being part of the lands of X, in the Parish of Y, and County of Z, which lease is recorded (*specify Register of Sasines and date of registration*): TO WHICH LEASE, in so far only as regards the following portions of the subjects leased—viz. (*here describe the portion assigned, as in the assignation*), M, N, and O have made up title as general trust disponees of C (*designation*), in virtue of a general Trust-Disposition and Settlement, &c. (*as in foregoing Style*): AND TO WHICH LEASE the said C acquired right, to the extent foresaid, by assignation granted by the said B in his favour (*specify date*).—WHEREUPON, &c. (*as before*).

In this case the title of the general disponees will be completed by registration in the appropriate Register of Sasines of the assignation, along with the notarial instrument, and with a warrant of registration written on each. The modifications necessary where the general disponees make up title to the whole subjects leased are obvious, and need not be exemplified.

The same form of instrument is applicable to the case of the trustee on a sequestrated estate, specifying, instead of the trust-deed, the act and warrant of confirmation.

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## SECTION IX

### COMPLETION OF THE TITLE OF HEIRS OF LONG LEASES

The title of an heir of a person who has died vested in the right to an unrecorded lease, will, for the purpose of the Registration of Leases Act, be completed by recording the lease, together with a Notarial Instrument proceeding on a Decree of General Service, and if the predecessor was not the original lessee, specifying the series of writs by which he acquired right (Section 5, Schedule C, No. 1).

In the case of a lease which has been recorded, the heir of a person who died fully vested in the lease may complete a title either (1) by Writ of Acknowledgment from the proprietor infeft in the subjects leased (Section 7, Schedule (E), No. 1); or (2) by a Notarial Instrument proceeding as in the case of an unrecorded lease, on his General Service (Section 8, Schedule (F), No. 1).

The heir of a party who had right to a recorded lease by an assignation not recorded in his lifetime, will (Section 9) complete his title by expeding a Notarial Instrument in the form of Schedule (F), No. 1, and recording the Assignation along with the Notarial Instrument.

In all the above cases the writs will be recorded in the appropriate Register of Sasines, with warrant of registration on behalf of the heir.

**1. Notarial Instrument in favour of an Heir in an  
Unrecorded Lease. (*Schedule (C), No. 1.*)**

BE IT KNOWN that by Lease, dated \_\_\_\_\_, 18 \_\_, A (*designation*), let to B (*designation*), ALL AND WHOLE (*shortly describe the property leased*), being part of the lands of X, in the Parish of Y, and County of Z: TO WHICH LEASE C (*designation*) has made up title by Decree of General Service in his favour as eldest son (*or otherwise, as the case may be*) and nearest lawful heir of the said B, expedé before the Sheriff of the County of Z (*or of Chancery*), dated \_\_\_\_\_, and recorded in Chancery, \_\_\_\_\_: WHEREFORE this Instrument is taken by the said C in the hands of G (*designation*), Notary Public, in terms of "The Registration of Leases" (Scotland) Act, 1857."—IN WITNESS WHEREOF, &c.

This Instrument will be recorded along with the lease, with a warrant of registration on each on behalf of the heir.

**2. Notarial Instrument in favour of the Heir of a Person who  
has acquired right to an Unrecorded Lease by a series  
of titles. (*Schedule (C), No. 1.*)**

BE IT KNOWN that by Lease, dated \_\_\_\_\_, 18 \_\_, A (*designation*), let to B (*designation*), ALL AND WHOLE (*shortly describe the property leased*), being part of the lands of X, in the Parish of Y, and County of Z: TO WHICH LEASE E (*designation*), has made up title by Decree of General Service in his favour as eldest son (*or otherwise, as the case may be*) and nearest lawful heir of D (*designation*), expedé before the Sheriff of Z (*or of Chancery*), dated \_\_\_\_\_, and recorded in Chancery (*specify dates*): AND TO WHICH LEASE the said D acquired right by (*First*), Trust-Disposition and Settlement by the said B, dated \_\_\_\_\_, and recorded in the Books of Council and Session (*specify dates*), whereby he assigned, disposed, and conveyed, legated, devised, and bequeathed to and in favour of G, H, and I (*designations*), and the acceptors and acceptor, survivors and survivor of them, and the heir of the last surviving acceptor, All and Sundry his whole means, estate, and effects,

heritable and moveable, real and personal, of whatever nature and wherever situated, then belonging or which might belong to him at the time of his death, but that in trust always for the ends, uses, and purposes therein specified; and (*Second*), Assignment, dated \_\_\_\_\_, granted by the said G, H, and I, as trustees fore-said, in favour of the said D: WHEREFORE this Instrument is taken by the said E, in the hands of L (*designation*), Notary Public, in terms of the "Registration of Leases (Scotland) Act, 1857."—IN WITNESS WHEREOF, &c.

Where the heir in this last case has right to the lease to only a partial extent, the necessary notifications may be made, as in the Style of a similar instrument in favour of an assignee, *supra*, p. 575.

This Notarial Instrument will be recorded in the appropriate Register of Sasines along with the lease itself, and with a warrant of registration on each writ on behalf of the heir.

### 3. Writ of Acknowledgment in favour of the Heir of a Person who died vested in a Recorded Lease. (*Schedule (E), No. 1.*)

I, A (*designation*), proprietor infest in the lands of X by infestment (*or disposition, or otherwise, as the case may be*), recorded in the (*specify Register of Sasines and date of registration*), ACKNOWLEDGE C (*designation*), as eldest son (*or otherwise, as the case may be*) and heir of the deceased B (*designation*), to be in right of a Lease granted by me, of (*shortly describe the subjects leased*), in the Parish of Y, and County of Z, being a portion of said lands of X, which Lease is dated \_\_\_\_\_, 18\_\_\_\_, and recorded in (*specify Register of Sasines and date of registration*).—IN WITNESS WHEREOF, &c.

If the party in whose favour the writ is granted be not the heir of the original lessee, insert the following or similar words immediately after specifying the date of registration of the lease, viz.:—"and the "title of the said B being recorded in said register (*or otherwise*), of "date" (*specify date*). It is unnecessary in such a case to deduce the whole series of titles by which B may have acquired right.

This mode of completing title is applicable only to a recorded lease, and to the heir of the original lessee, or of a party who had a recorded title.

**4. Notarial Instrument in favour of the Heir of an Assignee who died fully vested. (*Schedule (F), No. 1.*)**

BE IT KNOWN that by Lease, dated \_\_\_\_\_, 18\_\_\_\_, A (*designation*), let to B (*designation*), ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, which lease is recorded in the (*specify Register of Sasines and date of registration*): AND TO WHICH F (*designation*), has made up title by Decree of General Service expedite before the Sheriff of the County of Z (*or of Chancery*), dated \_\_\_\_\_, and recorded in Chancery (*specify dates*), in favour of the said F, as eldest son (*or otherwise, as the case may be*), and nearest lawful heir of E (*designation*), in an Assignment by D (*designation*), in favour of the said E, dated \_\_\_\_\_, and recorded in the (*specify Register of Sasines and date of registration*): WHEREUPON this instrument is taken by the said F in the hands of G (*designation*), Notary Public, in terms of "The Registration of Leases (Scotland) Act, 1857."—IN WITNESS WHEREOF, &c.

The Schedule on which the foregoing Style is framed does not apparently require that the whole series of transmissions by which the ancestor E acquired right should be specified, but only the recorded assignment in his favour.

**5. Notarial Instrument in favour of the Heir of an Assignee who died without recording the Assignment in his favour. (*Schedule (F), No. 1.*)**

BE IT KNOWN that by Lease, dated \_\_\_\_\_, 18\_\_\_\_, A (*designation*), let to B (*designation*), ALL AND WHOLE (*shortly describe the subject leased*), being part of the lands of X, in the Parish of Y, and County of Z, which lease is recorded in the (*specify Register of Sasines and date of registration*), and to which F (*designation*), has made up title by Extract Decree of General Service, expedite before the Sheriff of the County of Z (*or of Chancery*), dated \_\_\_\_\_, and recorded in Chancery (*specify dates*), in favour of the said F, as eldest son (*or otherwise, as the case may be*), and nearest lawful heir of E (*designation*), in an Assignment by D (*designation*), in his favour, of date (*specify date*), and the title of the said D to which lease is recorded in the (*specify*

*Register of Sasines and date of registration): WHEREUPON, &c. (as in the preceding Style).*

This Notarial Instrument will be recorded in the appropriate Register of Sasines along with the Assignment in favour of E, and with a Warrant of Registration on each Writ in favour of the heir. A docquet may also, if desired, be written on the Notarial Instrument, in similar terms to that required by the Titles to Land Consolidation (Scotland) Act in the case of feudal subjects (Schedule N); and, in that case, the warrant written on the Assignment will be in the terms of Schedule H (No. 2) of that Act. The Leases Act, however, does not require a docquet in any case.

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## SECTION X

### SECURITIES OVER LONG LEASES

As explained in our preliminary remarks to this Section, the Registration of Leases Act enables the lessee to borrow money over his leasehold, and, without changing the possession, to give to his creditor security equal, or even superior, to the ordinary security given by an absolute proprietor over feudal subjects, the preference in the event of a competition among creditors, as among assignees, being regulated (sec. 12) by the date of registration in the Register of Sasines.

It is provided by section 4 that "it shall be lawful for the party in "right of any such Lease, recorded as aforesaid and whose right thereto is "recorded in terms of this Act, but in accordance always with the conditions and stipulations of such Lease, and not otherwise, to assign the "same, in whole or in part, in security for the payment of borrowed "money, or of annuities, or of provisions to wives or children, or in "security of cash credits or other legal debt or obligation, in the form as "near as may be of the Schedule (B) to this Act annexed; and the recording of such Assignment in security shall complete the right thereunder; and such Assignment in security so recorded shall constitute a "real security over such lease to the extent assigned."

Section 20 further confers on the clauses of the Bond and Assignment in security set forth in Schedule (B) the import and effect declared by the 2nd and 3rd sections of the Heritable Securities Act (10 & 11 Victoria, c. 50) to belong to the corresponding clauses in the style of Bond and Disposition in security contained in Schedule (A) of the last-mentioned Act, and provides that "the procedure thereby prescribed for a "sale under a Bond and Disposition in security, shall be applicable to a "sale of any such lease as aforesaid under any such Assignment in security "as is hereinbefore mentioned."

The Heritable Securities Act here referred to is one of those repealed by the Titles to Land Consolidation Act of 1868, but by sec. 163 of that Act "is held to be still in force as far as regards any reference which may "be made to them" (the repealed statutes or any of them) in any statute not repealed, and to the effect of giving full effect to such reference.

Section 6 of the Registration of Leases Act further confers on the creditor in a Bond and Assignment in security under the Act, an

additional advantage, by providing that "the creditor or party in right of such Assignment in security, without prejudice to the exercise of any power of sale therein contained, shall be entitled, in default of payment of the capital sum for which such Assignment in security has been granted, or of a term's interest thereof, or of a term's annuity, for six months after such capital sum or term's interest or annuity shall have fallen due, to apply to the Sheriff for a warrant to enter on possession of the lands and heritages leased; and the Sheriff, after intimation to the lessee for the time being, and to the landlord, shall, if he see cause, grant such warrant, which shall be a sufficient title for such creditor or party to enter into possession of such lands and heritages, and to uplift the rents from any sub-tenants therein, and to sub-let the same, as freely and to the like effect as the lessee might have done; provided always that no such creditor or party, unless and until he enter into possession as aforesaid, shall be personally liable to the landlord in any of the obligations and prestations of the Lease."

The following is the style of Bond and Assignment in security provided by Schedule (B) of the Act, adding only the place of payment. The terms of the personal obligation are not so full as those of the ordinary Bond and Disposition in security over feudal subjects, but we see no reason for deviating from the Schedule in the case of the ordinary Bond for borrowed money or Bond of Annuity. The Style is easily adaptable to other transactions within the scope of the Act when these occur, and where they are not within the express terms of the Schedule.

#### 1. Bond and Assignment in Security, by the Original Lessee over a Recorded Lease. (*Section 4, Schedule (B).*)

I, B (*designation*), bind myself, my heirs and executors, without the necessity of discussing them in their order, to make payment at the term of (*state term*), within the head office of the Bank of Scotland, Edinburgh (*or, as the case may be*), to C (*designation*), or his executors or assignees (*or otherwise, as the case may be*), of the sum of £                      sterling, being money borrowed by me from him, with the interest of the said capital sum at the rate of                      per centum per annum, payable by equal portions half-yearly at Whitsunday and Martinmas, beginning the first payment at (*state term*): AND IN SECURITY of the personal obligation before written I ASSIGN to the said C and his foresaids, heritably but redeemably as after-mentioned, yet irredeemably in the event of a sale by virtue hereof, a Lease of ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z; which Lease was granted by A (*designation*), of date                      , and recorded (*specify Register of Sasines and date of registration*); AND I assign the rents; AND I assign the

writes; AND I grant warrandice; AND I reserve power of redemption; AND I oblige myself and my foresaids for the expenses of assigning and discharging this security; AND on default of payment, I grant power of sale; AND I CONSENT to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

Many of the clauses given as variations of or additions to the ordinary bond secured over feudal subjects may, of course, *mutatis mutandis*, be incorporated in the above Style.

The creditor's right will be completed by the registration of the Bond and Assignment in Security, with warrant of registration thereon in his behalf in the appropriate Register of Sasines.

When so recorded, the bond is transferable, in whole or in part, by translation, in the form of Schedule (D) of the Act, of which the following is an example:—

## 2. Translation of a Bond and Assignment in Security by the Original Creditor. (*Section 6, Schedule (D).*)

I, C (*designation*), IN CONSIDERATION OF the sum of £ sterling now paid to me (*or otherwise, as the case may be*), ASSIGN and TRANSFER to D (*designation*), a Bond and Assignment in security for the principal sum of £ , granted by B (*designation*), in my favour, dated , and recorded (*specify Register of Sasines and date of registration*), of and over a Lease granted by A (*designation*), of (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, which Lease is dated , and is recorded in the said Register of date [*if the translation is partial, add, but only to the extent of £ , and to the effect of giving pari passu preference to the said D over the said lease with me, my heirs and assignees, as regards the remainder of the said principal sum and corresponding interest*], with the interest from (*date*).—IN WITNESS WHEREOF, &c.

## 3. Translation of Bond and Assignment in Security over portion of a Leasehold, by an Assignee of the Original Creditor. (*Schedule (D).*)

I, D (*designation*), IN CONSIDERATION OF the sum of £ sterling now paid to me, ASSIGN and TRANSFER to E (*designation*), a

Bond and Assignment in Security for the principal sum of £                      sterling granted by B (*designation*), in favour of C (*designation*), dated                      , and recorded (*specify Register of Sasines and date of registration*), of and over a Lease granted by A (*designation*), of ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, which Lease is dated                      , and is recorded in the said Register of date                      : BUT IN SO FAR ONLY as regards the following portion of the subjects leased—viz. (*specify the portion as described in the Bond assigned*),—my title to which Bond and Assignment in Security is recorded in said Register of date (*insert date*).—IN WITNESS WHEREOF, &c.

The right of the assignee is completed by registration of the Translation in the appropriate Register of Sasines, with Warrant of Registration thereon on his behalf.

Where the Bond has not been recorded in the lifetime of the assignee, his heir or general disponee will (sec. 5) complete his title by expeding a Notarial Instrument in the Form of Schedule (C), No. 2, and recording the Bond along with such Instrument.

#### 4. Notarial Instrument in favour of the Heir of a Creditor in an Unrecorded Bond and Assignment in Security. (Schedule (C), No. 2.)

BE IT KNOWN, that by Bond and Assignment in Security of date                      , B (*designation*), assigned to C (*designation*), in security of a sum of £                      sterling, a Lease granted by A (*designation*), of ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, which Lease is dated                      , and recorded (*specify Register of Sasines and date of registration*): To which Bond and Assignment in Security D (*designation*), has acquired right as eldest son (*or otherwise, as the case may be*, and heir of the said C, conform to Decree of General Service, dated                      , and recorded in Chancery                      , expedite before the Sheriff of the County of Z (*or, of Chancery*): WHEREFORE this Instrument is taken by the said D in the hands of G (*designation*), Notary Public, in terms of the "Registration of Leases (Scotland) Act, 1857."—IN WITNESS WHEREOF, &c.

In like manner, where the creditor who has acquired right to a Recorded Bond and Assignment in Security, has died without recording the Translation in his favour, his heir or general disponee will (sec. 9) complete his title by expediting a Notarial Instrument in the form of Schedule F, and recording it along with the Translation.

**5. Notarial Instrument in favour of the General Disponees of an Assignee who has died without recording the Translation in his favour. (*Schedule (F), No. 2.*)**

BE IT KNOWN that by Bond and Assignment in Security, of date \_\_\_\_\_, and recorded (*specify Register of Sasines and date of registration*), B (*designation*), assigned to C (*designation*), in security of a sum of \_\_\_\_\_ sterling, a Lease granted by A (*designation*) in favour of the said B of ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, which Lease is dated \_\_\_\_\_, and recorded in the (*specify Register of Sasines and date of registration*): To which Bond and Assignment in Security M, N, and O (*designations*), have acquired right as Trustees and general disponees of the deceased D (*designation*) in virtue of a General Trust-Disposition and Settlement executed by him of date the \_\_\_\_\_ day of \_\_\_\_\_, and recorded in the Books of Council and Session (*or otherwise, as the case may be*), the \_\_\_\_\_ day of \_\_\_\_\_, whereby the said D assigned, disposed, and conveyed, devised, legated, and bequeathed to and in favour of the said M, N, and O (*here recite the terms of the destination so far as necessary, and the general conveyance*), but in trust always for the ends, uses, and purposes therein mentioned: AND to which Bond and Assignment in Security the said D acquired right by translation dated \_\_\_\_\_, granted by the said C in his favour.—WHEREUPON, &c. (*as before*).

The heir of a creditor who has died vested in right of a Bond and Assignment in Security duly recorded, may complete his title either (sec. 7) by recording a Writ of Acknowledgment, to be granted, in this case, by the party appearing on the Register as in absolute right of the lease over which the Assignment in Security has been granted; or (sec. 8) by expediting and recording a Notarial Instrument in the form of Schedule (F), No. 2.

**6. Writ of Acknowledgment in favour of the Heir of the Creditor vested in a Recorded Bond and Assignment in Security. (Schedule (E), No. 2.)**

I, B (*designation*), being in right of a Lease granted by A (*designation*), of ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, which Lease is dated \_\_\_\_\_, and recorded (*specify Register of Sasines and date of registration*), and (*where granter is not the original lessee*) my title to which is recorded in said Register (*specify date of recording*), ACKNOWLEDGE D (*designation*), as eldest son (*or otherwise, as the case may be*), and heir of the deceased C (*designation*), to be in right of a Bond and Assignment in Security for the sum of £ \_\_\_\_\_ sterling, granted by me (*designation*), over said lease: Which Bond and Assignment in Security is dated \_\_\_\_\_, and recorded in the said Register on (*state date of registration*), [*where the deceased is not the original creditor*, add, the title of the said C to which Bond and Assignment in Security is recorded in the said Register on (*state date of registration*)].—IN WITNESS WHEREOF, &c.

**7. Notarial Instrument in favour of the Heir of an Assignee who died vested to a partial extent in a Recorded Bond and Assignment in Security. (Schedule (F), No. 2.)**

BE IT KNOWN that by Bond and Assignment in Security, of date \_\_\_\_\_, and recorded in the (*specify Register of Sasines and date of registration*), B (*designation*), assigned to C (*designation*), in security of a sum of £ \_\_\_\_\_ sterling, a Lease granted by A (*designation*), of ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, dated \_\_\_\_\_, and recorded in the (*specify Register of Sasines and date of registration*): To which Bond and Assignment in Security to the extent of the sum of £ \_\_\_\_\_, and corresponding interest, E (*designation*), has acquired right as eldest son (*or otherwise, as the case may be*), and heir of D (*designation*), in an assignment thereof to the extent foresaid, granted by the said

C in favour of the said D, dated , and recorded in the (*specify Register of Sasines and date of registration*), conform to Extract Decree of General Service in favour of the said E, dated , and recorded in Chancery , obtained before the Sheriff of the County of Z (*or of Chancery*): WHEREUPON, &c. (*as before*).

The right of the heir will be completed by registration of these writs in the appropriate Register of Sasines, with warrant of registration thereon on his behalf.

### 8. Discharge of Bond and Assignment in Security.

(Section 13, Schedule (H).)

I, C (*designation*), IN CONSIDERATION OF the sum of £ sterling, now paid to me by B (*designation*), DISCHARGE a Bond and Assignment in Security for the sum of £ sterling, granted by the said B in my favour, and which is dated , and recorded in the (*specify Register of Sasines and date of registration*): AND I declare to be disburdened thereof a Lease granted by A (*designation*), of ALL AND WHOLE (*shortly describe the subjects leased*), being part of the lands of X, in the Parish of Y, and County of Z, which Lease is dated , and recorded in the (*specify Register of Sasines and date of registration*).—IN WITNESS WHEREOF, &c.

If the granter of the discharge is not the original creditor but an assignee, add the following words after specifying the date, and date of registration of the bond—viz., “And my title to which is recorded in “said register of date” (*specify date*).

The discharge will, like the other writs above mentioned, be recorded with warrant of registration in the appropriate Register of Sasines.

# TITLE IX

## SETTLEMENTS AND OTHER DEEDS GRANTED *INTUITU MORTIS*

### SECTION I

#### WILLS AND CODICILS CONFINED TO MOVEABLE ESTATE

THE Testament is that form of will which is peculiar to moveables. In its simplest form it consists only of the nomination of an executor. In this form, however, it seldom occurs in practice, and the testament generally comprehends, in addition to the clause nominating an executor, clauses by which legacies are given, and the residue of the granter's estate is disposed of. As it is the duty of an executor to distribute, not to hold, the estate (*Ainslie v. Ainslie*, 14 R. 209), this form of will is suitable only where the bequests are of a simple nature, and can be carried out at, or shortly after, the testator's death.

The following form of Testament, which gives the executor the office only, contains bequests of legacies in terms suitable for a variety of cases.

#### 1. Testament giving the Executor the Office only; bequeathing Legacies; and disposing of the Residue.

I, A, BEING desirous to provide for the disposal of my moveable estate after my death, DO hereby NOMINATE and APPOINT B to be my sole executor; and I ORDAIN my said executor to pay and deliver the following legacies to the persons after named and designed, viz. :—To C the sum of £500 sterling free of legacy duty.<sup>(a)</sup> Item, to D the sum of £1000 sterling, and that at the first term of Whitsunday or Martinmas which shall happen after the lapse

Inductive clause.  
Appoint-ment of the executor.  
Executor to pay legacies.  
General legacies of capital sums :—

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(a) Unless the testator expressly declares that a legacy is to be paid free of legacy duty, such duty falls to be paid by the legatee or deducted from the legacy. Interest on this legacy will run from date of testator's death.

To the legatee personally.

To the legatee and his executors.

To the legatee and a conditional institute named.

To the legatee and a substitute named.

To two legatees.  
To children.

of six months from the time of my decease, with the interest of the same, at the rate of £4 per centum per annum, from the said term of payment until payment thereof. (a) Item, to E, and to his heirs, executors, or successors, the sum of £200 sterling, and that at the first term of Whitsunday or Martinmas after my decease, with the interest of the said sum, at the foresaid rate, from the said term of payment until payment thereof. (b) Item, to F, or, in case he shall die before me, to N, the sum of £500 sterling, and that twelve months after my decease, with interest, at the foresaid rate, from the said term of payment till paid. (c) Item, to G, and failing him to H, the like sum of £500 sterling, and that also twelve months after my decease, with interest at the foresaid rate, from the said term of payment till paid; DECLARING that in case the said G shall predecease me, or (if he shall survive me) in case he shall die without having received payment of the sum foresaid, then the said H shall succeed thereto in preference to the nearest of kin and other successors of the said G, whom I hereby in that case expressly exclude from the succession to the same. (d) Item, to I and J, jointly, the sum of £100 sterling. (e) Item, to K, L, and M, children of N, and to any other child or children to be hereafter lawfully born to him, equally among them, share and share alike, the sum of £1000 sterling, and that at the first term of Whitsunday or Martinmas after my decease; DECLARING that, in case any one or more of the

(a) A legacy conceived in these terms, without mention of the heirs or executors of the legatee, will lapse or become void by the legatee predeceasing the testator.

(b) A legacy devised, as it is in this instance, "to a legatee and his executors," is not evacuated by the predecease of the legatee, but passes, after the testator's decease, to the legatee's executors, not by any right which these executors derive from the legatee, to whom that legacy never belonged, he having died before it could have effect by the testator's death, but in their own right as conditional "institutes in the legacy" (Ersk. B. III. Tit. ix. § 9).

(c) In this form, N, the legatee called in the second place, is merely a conditional institute, and on the legacy vesting in F, the right of N is evacuated. If the terms employed had been "to M, whom failing to N," the effect would have been the same.

(d) This declaration is necessary to suspend vesting of the legacy in G till actual payment.

(e) A legacy given in these terms will be divided between the legatees equally if it shall become vested in them, but if one of them shall die before that event, his share will accrue to the survivor. The rule is different, however, where the legacy is granted in the following form:—"To S and T, to be equally divided between them, the sum of £100 sterling." Such a legacy is considered to be equivalent to two separate bequests, amounting each to one-half of the gross sum; and in such a case the *jus accrescendi* will not take place, and the share of the predeceasing legatee will return to the testator's next of kin, or will fall to the residuary legatee.

said K, L, and M, or any other child or children to be born to the said N as aforesaid, shall predecease me, or die without having received payment of his, her, or their share, or several shares, of the foresaid sum of money, then such share or shares of the child or children so dying shall accrue to the survivor or survivors, equally among them, share and share alike; PROVIDING NEVERTHELESS that if the child or children so dying shall leave lawful issue, then such issue shall have right to the share or respective shares, original or accrued, of the foresaid sum which their deceased parent or parents would have received, or been entitled to if living. Item, the sum of £100 sterling to and among such poor families in the parish of O, as the minister of the said parish for the time being shall think most deserving of assistance, the same to be divided among them in such proportions as the said minister shall think fit. Item, to the Royal Infirmary of Edinburgh the sum of £1000 sterling, to be paid upon the receipt of the Treasurer or Secretary thereof for the time being, for the purposes of the said infirmary, this and the immediately preceding legacy to be payable six months after my decease. To P, the sum of £500 sterling, contained in and due by a bond, bearing date the , made and executed by Q in my favour, with the penalty therein contained, and the whole interest that may be due thereon at the time of my decease.(b) Item, I DISCHARGE R, or his heirs if he shall predecease me, of the sum of £200 sterling contained in his bond to me, of date the , with the whole interest due thereon at the time of my decease, and I desire my said executor to deliver to him or his heirs the said bond, to be cancelled. Item, I LEAVE and BEQUEATH to S the sum of £20 sterling, for the purpose of providing himself with mournings:(c) AND to T the sum

To poor families.

To a charitable institution.

Special legacies.(a)

Of sums to provide mournings, &c.

(a) "In the legacy of a sum or subject particularly described, the legatee has "right to the whole of that sum or subject, if what remains (of the executry) "shall be sufficient for the payment of the debts due by the deceased, though "there should be no overplus towards satisfying other legacies; because the "deceased, by bequeathing a special sum or subject, discovers an intention that "the subject bequeathed should go to the legatee in all events: and, on the other "hand, seeing such bequest is limited to a special subject, nothing is due to the "legatee if that subject shall perish, whatever the extent of the free executry "may be, unless it has perished through the fault or negligence of the executor" (Ersk. B. III. Tit. ix. § 12).

(b) The legacy will be adeemed if the bond is paid up before the testator's death (*Pagan v. Pagan*, 16 S. 383).

(c) We have classed this and the next bequest among special legacies in consequence of the following rule, thus stated by Mr. Erskine:—"It may be observed

Of farming stock. of five guineas, for a mourning ring. Item, I LEAVE to U the whole farm stock and implements of husbandry that may be upon and  
 Of furniture. pertaining to my farm of V at the time of my death. Item, I LEAVE and BEQUEATH to W, all and sundry my household furniture, bed and table linen, silver plate and plated articles, table and ornamental china, wines, and generally all kinds of household furniture and plenishing, whether useful or ornamental, that may be in and about my dwelling-house at the time of my decease; EXCEPTING always  
 Of plate. the particular articles after specified. Item, to X, I LEAVE the whole silver plate belonging to me which has the arms or crest of  
 Of pictures. the family of M engraved thereon. Item, to Y my whole pictures, prints, and drawings, except the picture of Z, which I hereby BE-  
 Of books. QUEATH to the said P, his son. Item, to the said Q my whole books, papers, and manuscripts, excepting such books and papers as shall be necessary for settling and elucidating my affairs. Item, to the  
 Of other articles. said R, second son of S, or such other son of the said S as, at the time of my decease, shall be second son in seniority, my gold watch, or, in case my said watch shall be lost, worn out, or destroyed, £30 in lieu thereof. Item, to the said T, all the preference stock, Class A, which I may hold in the A & B Railway Company at the time of my  
 Of railway stock. decease. Item, to the said X the goodwill of my trade or business  
 Of business. of , and the stock-in-trade, machinery, plant, and effects employed therein or belonging thereto, with the benefit of all contracts subsisting in respect of the said business, and all book debts and moneys due to me in respect thereof, declaring that the said X shall discharge and relieve my general estate from all debts and liabilities due and subsisting in respect of the said business at my death, and that the said X shall, if required by my executor, grant a bond or give other security at the expense of my general estate for the implement of said obligation. DECLARING that where two or more legacies are bequeathed to the same legatee, the same shall be held to be additional or cumulative and not substitutional. AND whatever RESIDUE there may be of my said means and estate falling under this testament, I ORDAIN the same to be accounted for and

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"that a legacy, though in the form of words general of a sum of money, has the effect of a special legacy where the deceased declares it to be granted for purchasing a special subject, the bequest of which would have been preferable to other legacies. Thus, a legacy of £20 to an executor for mournings was preferred to other legacies in so far as it extended to the sum at which a decent suit of mournings might be purchased" (Ersk. B. III. Tit. ix. § 12).

paid over to the said X, whom I hereby appoint to be my residuary legatee: AND I CONSENT to the registration hereof, and of any codicil or codicils which I may afterwards annex or execute relative hereto, for preservation.—IN WITNESS WHEREOF, &c.(a)

When it is meant that the executor shall not only have the office, but shall also have right to the residue of the estate, he is then constituted *universal legatory*. The mere introduction of these two words is all that is legally necessary to accomplish this purpose; but, for the sake of greater perspicuity, it may be proper to insert a special bequest in favour of the executor of the whole of the granter's moveable estate, burdened, however, with his debts and legacies, as in the following form:—

## 2. Testament constituting the Executor Universal Legatory; and bequeathing Legacies to Legatees.

I, A, BEING resolved to settle my affairs, and to regulate the succession to my moveable means and estate after my death, DO hereby NOMINATE and APPOINT B to be my sole executor and universal legatory, LEAVING and BEQUEATHING to him the whole moveable estate that may pertain and be resting-owing to me at the time of my decease, with the whole vouchers and instructions thereof, and all that has followed or may be competent to follow thereon: BUT ALWAYS with and under the burden of all my just and lawful debts, death-bed and funeral charges, and of the legacies hereinafter appointed to be paid: AND I ORDAIN my said executor to pay and deliver the following legacies to the persons after named and designed—viz. (*here specify the legacies*): AND I CONSENT to the registration hereof, and of any codicil or codicils which I may afterwards annex or execute relative hereto, for preservation.—IN WITNESS WHEREOF, &c.

Inductive clause.

Appointment of the executor. General bequest to him.

Burdens.

Legacies.

## 3. Codicil granting new Legacies.

When a person, who has already executed a testament, intends to leave other legacies than those contained in it, his intention is carried into effect

(a) In cases where there is any probability of the testator dying domiciled in England, it will be prudent to have the testament attested in English form thus: "Signed by the testator, the above named A, in our presence and by us in his presence and in the presence of each other (two witnesses required who will add their designations after their signatures)."

#### 4. Codicil *revoking, restricting, and adding to Legacies.*

I, A, DO hereby REVOKE and RECALL the legacy of £  
sterling, bequeathed in the foregoing testament in favour of F: AND  
FURTHER, I DO hereby RESTRICT the legacy of £ sterling,  
bequeathed to G, to the sum of £ sterling; AND in  
addition to the sum of £ sterling, bequeathed to H, I  
hereby LEAVE and BEQUEATH to him the further sum of £  
sterling, to be paid to him at the same term at which his original  
legacy is payable; AND in all other respects I hereby ratify and con-  
firm my said testament: AND I CONSENT to registration hereof for  
preservation.—IN WITNESS WHEREOF, &c.

## DISPOSITIONS AND SETTLEMENTS OF MOVEABLES

The preceding deeds are all in a form strictly testamentary ; and the rights granted by them do not vest in the executor or beneficiaries till the testator's death. But there are other deeds granted *intuitu mortis*, such as the disposition and settlement, in which (in form at least) the right is given *de presenti* to the persons in whose favour they are granted. Such deeds, however, as distinguished from *inter vivos* deeds, usually contain a clause reserving the grantor's liferent of the subjects, and liberty

to alter or revoke the deed at pleasure, and also a clause dispensing with delivery, these clauses having the effect of suspending the operation of the deed until the death of the granter.

### 1. Disposition and Settlement of Moveables in the ordinary form.

I, A, FOR the favour and affection I have to the persons after named, DO hereby, with and under the burdens and reservations after specified, ASSIGN and DISPONE to B, his heirs, executors, and assignees whomsoever, ALL AND SUNDRY the whole moveable estate, of whatever kind and denomination, or wherever situated, at present belonging and addebted, or which shall belong and be owing to me at the time of my death; together with the whole writs, titles, vouchers and instructions of my said estate [o]: AND FURTHER, I do hereby NOMINATE and APPOINT the said B to be my sole executor and universal legatory: BUT DECLARING ALWAYS that the said B and his foresaids shall be BOUND and OBLIGED to make payment out of my said moveable estate of all my just and lawful debts, death-bed and funeral expenses, and of any gifts and legacies I may think proper to leave, and particularly of the legacies following—viz. (*here specify the legacies, &c.*), RESERVING ALWAYS to myself my own liferent of the premises, with full power to me to alter or revoke these presents, in whole or in part, at any time in my life: AND I DISPENSE with the delivery hereof: AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

Inductive clause.  
Disposition.  
Nomination of executor.  
Burdens.  
Reservation of liferent.  
Dispensation with delivery.

### 2. Disposition and Settlement of Moveables containing a Special Assignment.

By Act of Parliament, 1690, c. 26, it is declared, "That where special assignments and dispositions are lawfully made by the defunct, though neither intimate nor made public in his lifetime, they shall be yet good and valid rights and titles to possess, bruik, enjoy, pursue, or defend, albeit the sums of money or goods therein contained be not confirmed." With the view, therefore, of rendering a confirmation of particular sums of goods unnecessary, and of thus saving the expense of such a measure, testators sometimes avail themselves of the privilege granted by this Act, and convey specially, in their settlements the more important parts of their

moveable estates(a). The following is the form in which this is accomplished :—

I, A, &c. (*as in the preceding Example to [o], and then say*)—  
AND PARTICULARLY, without prejudice to the generality foresaid, the several sums of money and goods hereafter specified—viz., the sum of £500 sterling, contained in a bond granted by G to me, bearing date the \_\_\_\_\_, with the interest of the said principal sum that may be due at the time of my death; ALSO the sum of £200 sterling, and interest due thereon, contained in promissory note granted to me by H, of date the \_\_\_\_\_, payable two months after date: AND FURTHER, all the sums of money and goods which shall be contained in a list or inventory thereof signed, or to be hereafter signed by me, as relative hereto, and which list or inventory shall be taken and deemed as a part hereof, and shall supersede the necessity of confirmation, in the same manner as if every particular therein contained had been herein specially enumerated and inserted. (*The rest of the deed will be in the form of the preceding Example from [o] to the end; and the testing clause will be as follows:—*  
IN WITNESS WHEREOF, &c.; *inserting between are and subscribed the words together with the inventory before referred to; which inventory should be docqueted and tested.*)

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### SECTION III

#### GENERAL DISPOSITIONS AND SETTLEMENTS, INCLUDING SETTLEMENTS IN TRUST

Settlements in the forms exemplified in the preceding section, seldom occur in practice, as they relate only to moveables. The following forms embrace both heritage and moveables :—

##### 1. General Disposition and Settlement.

I, A, being desirous to settle my affairs in the event of my death, DO hereby LEAVE and BEQUEATH to B, and his heirs and assignees whomsoever, the whole means and estate, heritable and moveable, which shall belong to me or be at my disposal at the time

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(a) This will not enable the disponent to escape payment of estate or other duty on the property thus specially conveyed.

of my death, with the vouchers, writs, and instructions thereof; BUT subject always to payment of my just and lawful debts and other charges against my estate, and any legacies which I may leave by any codicil hereto; AND I NOMINATE and APPOINT the said B to be my sole executor; AND I hereby REVOKE and RECALL all wills and writings of a testamentary nature executed by me prior to the date hereof; AND I CONSENT to the registration hereof and of any codicils hereto for preservation.—IN WITNESS WHEREOF.

## 2. General Disposition and Settlement. (*Another form.*)

I, A, being desirous to settle my affairs in case of my death, do hereby ASSIGN and DISPONE to B, my eldest son, and the heirs of his body, and failing him by his predeceasing me, without leaving lawful issue, to D and the heirs of his body, whom failing, to E and his heirs, executors, and assignees, the whole means and estate, heritable and moveable, real and personal, of what kind or denomination soever or wheresoever situated, that shall belong and be addebt to me at the time of my decease; TOGETHER with the whole vouchers and instructions, writs, and evidents of and concerning my said means and estate, above conveyed; EXCEPTING always from this conveyance, in the event after-mentioned, the household furniture and goods herein-after assigned to C, my wife, in case she shall survive me; AND I do hereby ASSIGN and CONVEY to the said C, my wife, in case she shall survive me, the whole household furniture and plenishing of every description belonging to me, that may be in and about my dwelling-house at the time of my decease, including books, pictures, linen, china, liquors, provisions, and other articles of a like description; EXCEPTING ONLY from this assignation the whole of my silver plate and plated articles, which I hereby ASSIGN to the said C in liferent, for her liferent use allenarly, and to G in fee: AND I hereby NOMINATE and APPOINT the said B, and failing him by his predeceasing me, the said D, whom also failing, the said E, to be my sole executor: DECLARING always that the said B and his foresaids, and failing him as aforesaid the said D and his foresaids, whom failing, the said E and his foresaids, shall be BOUND and OBLIGED, out of my said means and estate above conveyed, to make payment of the debts, provisions, and others under written—viz.: FIRST, To make payment

Inductive clause.  
Dispositive clause

Clause excepting furniture from the general disposition.

Assignation of furniture to widow, excepting plate, which is assigned to her in liferent and to the eldest son in fee.

Nomination of executors.

Burdens.

To pay  
debts, &c.  
Provisions  
to widow  
and  
children.  
Liferent of  
sum to  
widow.

To lapse if  
she marry  
again.

Provision in  
lieu thereof.

Provisions  
to children.

of all my just and lawful debts, death-bed and funeral expenses; SECOND, Within six months after my death, to lend on good heritable security, at the sight and with the consent of the said C, my spouse, the sum of £6000 sterling (*or say*, such a capital sum as shall produce a free liferent annuity to her of £200 sterling), the said security to be conceived in favour of my said spouse in liferent, for her life-rent alimentary use allenary, and of the said B and his foresaids, whom failing, of the said D and his foresaids, whom failing, of the said E and his foresaids, in fee; DECLARING that if the said C shall again marry, then her right to the liferent of the foresaid sum of money shall become *ipso facto* void and null in the same manner as if the said C had been naturally dead; and in that event I appoint the said B and his foresaids, whom failing, the said D and his foresaids, whom failing, the said E and his foresaids, to pay to the said C the sum of £1000 sterling, and that at the first term of Whitsunday or Martinmas after such subsequent marriage, with interest thereon, at the rate of £4 per centum per annum, from the said term till payment of the same; (a) and to make payment to (*here mention any other provisions to be paid to the granter's widow as exemplified infra, in Examples 4 and 5*): AND LIKEWISE to PAY to (*here specify any provisions to the granter's children as exemplified infra, in Examples 4 and 5*): And THIRDLY, To make payment to (*here specify legacies, and then say*), AND I hereby REVOKE all former testamentary writings made and executed by me: AND I RESERVE full power to me at any time in my life to alter or revoke these presents in whole or in part: AND I DISPENSE with the delivery hereof: AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

The above is a common form of the disposition and settlement, but it is of course liable to variation, according to the situation of parties. Thus, a husband and a wife, or two sisters, may be desirous that the property of both should descend to the survivor, and this may be accomplished by their executing a mutual deed in the following form:—

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(a) If it is intended, instead of the above liferent provision, to give the wife an annuity, to be restricted in the event of a second marriage, the form will be found below, in Example 5.

### 3. Mutual Disposition and Settlement by two Sisters of their *Heritage and Moveables.*(a)

WE, A and B, only surviving daughters of the deceased X, from our affection for each other, have agreed to grant these presents in manner underwritten: THAT IS TO SAY, I, the said A, do hereby ASSIGN and DISPONE to the said B, in case she shall survive me, and her heirs and assignees whomsoever, my whole heritable and moveable estate, of whatever nature or denomination the same may be, which shall belong to me at the time of my decease, with the whole writs and evidents, vouchers and securities thereof; AND in like manner, I, the said B, ASSIGN and DISPONE to the said A, in case she shall survive me, and her heirs and assignees whomsoever, my whole heritable and moveable estate, of what kind and denomination soever, which shall belong to me at the time of my death, with the whole writs and evidents, vouchers and securities of the same: AND we do hereby NOMINATE and APPOINT the survivor of us to be sole executor and universal legatory of such one of us as shall predecease; RESERVING always to us, and each of us, full power at any time during our joint lives, to alter, or revoke these presents, in whole or in part, as we, or either of us, may see proper; BUT DECLARING ALWAYS that in the event of either of us exercising the said reserved power of alteration or revocation, these presents shall thenceforth become and be null and void to all intents and purposes: AND WE CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

Inductive  
clause.

Disposition.

Appoint-  
ment of  
executor.

Reservation  
of power  
to alter.

If it be intended that the trustees shall have wider powers and greater privileges than those above specified, it will be necessary to insert such in the deed.

The following is a simple form of the trust-disposition and settlement suitable for a family settlement; and it contains only such powers and privileges as are not conferred upon trustees by statute.

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(a) It is inadvisable to adopt the form of a mutual will where it can be avoided. If the will makes dispositions of the estate in favour of parties other than the testators themselves, difficult questions arise as to whether the deed is merely testamentary, or is also contractual, and as to the survivor's power of revocation (see *Corrance's Trs. v. Glen*, 5 F. 777). In the Style here given, it is thought that such questions will not arise, seeing that on the death of one testator the other becomes fief of the whole estate.

#### 4. Trust Disposition and Settlement *suitable for a Family Settlement.*

Inductive  
clause.  
Dispositive  
clause.

I, A, MERCHANT in Leith, being desirous of settling the disposal of my means and estate after my death, DO hereby ASSIGN and DISPONE (*and if English property be included, add* devise, legate, and bequeath) to B, my wife, C, my eldest son, and D, W.S., Edinburgh, and such other person or persons as I may hereafter appoint to act in the trust hereby created, or as may be assumed therein, or the acceptors or acceptor, and survivors or survivor of them (the said persons being hereinafter denominated "my trustees"), and their assignees, the whole means and estate heritable and moveable, real and personal, of what kind or denomination soever, and wheresoever situated, which shall belong to me, or be at my disposal, at the time of my death, with the whole writs, vouchers and instructions of and concerning my said means and estate; AND I hereby APPOINT my trustees to be my sole executors; BUT these presents are granted by me in trust only for the purposes after-mentioned, viz.—(*First*), For payment of all my just and lawful debts, death-bed and funeral expenses, and the expenses of executing this trust; (*Second*), That my trustees shall give to the said B, my wife, in the event of her surviving me, during all the days of her life, so long as she shall remain my widow, the life rent use and enjoyment of my dwelling-house, No.

Purposes of  
trust.  
1. Payment  
of debts, &c.  
2. Life rent  
of house and  
furniture to  
wife.

Street, Edinburgh, or of such other house as shall at the time of my death be my residence in Edinburgh and belong to me, together with the whole household furniture and plenishing therein at the time of my death, including books, pictures, linen, china, plate, plated articles and other household effects, and after the death or re-marriage of my said wife, the said house, furniture, plenishing and others shall form part of the residue of my said means and estate, and be disposed of as after-mentioned; (*Third*), That my trustees shall pay one-half of the annual income of the remainder of my said means and estate to my said wife during her life [*and if it be the intention, then add* but in the event of her entering into a second marriage, this provision in her favour shall be restricted to the annual income of one-fourth of the remainder of my said means and estate (*or otherwise as may be desired*)], said

3. Life rent  
of half of  
estate to  
wife.

income to be payable at the terms of Whitsunday and Martinmas in each year, or at such other terms as my trustees may consider most suitable; (*Fourth*), That my trustees shall HOLD the whole residue of my said means and estate (including as aforesaid, but subject always to the foresaid liferent) for behoof of my children, the said C and E, F and G, and such other child or children as may yet be born to me, or such of them as may be alive at the time of my death in equal portions if more than one shall survive (*or in such other proportions as the truster may desire*); and my trustees shall PAY OVER to each of the said C and E, and such other son or sons as may yet be born to me, his share on his attaining the age of twenty-one years, and to each of the said F and G, and such other daughter or daughters as may yet be born to me, her share on her attaining said age or being married, whichever of these events shall first happen; but the said provisions in favour of my said children shall not vest until the respective terms of payment of the same, and until the term of payment my trustees shall apply the free annual income of the presumptive portion of each child, or so much thereof as my trustees may consider necessary for his, her, or their maintenance and education; and notwithstanding what is above written, it shall be in the power of my trustees in their discretion to make payment to any child out of the capital of his or her presumptive portion of a sum or sums not exceeding in whole one-half of such child's portion, for his or her advancement in life: AND I DECLARE that the issue of any of my said children who may predecease the term of vesting leaving issue, shall succeed to the share, both original and accruing, to which their parent would have been entitled if in life. [*If the legal rights of the wife and children have not previously been discharged, here add*: AND I FURTHER DECLARE that the foresaid provisions in favour of my said wife and children are and shall be in full of all that she or they could claim by or through my decease in respect of terce *jus relictæ* and legitim, or any other legal claims competent to them respectively], and also that the foresaid provisions, so far as conceived, in favour of or devolving upon females, shall be for their own sole and separate use, and shall be exclusive of the right of administration, and all other legal rights of any husband or husbands they may marry; and I NOMINATE and APPOINT my trustees to be

4. Fee of estate to children.

Term of payment.

Term of vesting.

Application of income of each child's portion till term of vesting.

Power to make advances out of capital.

Issue of children to succeed to parent's share.

Provisions in favour of females to exclude husband's rights.

Trustees to  
be tutors  
and curators  
to children.  
Powers, &c.,  
of trustees.

Power to  
invest.

Power to  
sell.

To appoint  
factors, &c.

Trustees not  
to be respon-  
sible for  
losses, &c.

tutors and curators to such of my children as may be in pupillarity or minority at the time of my death ; and I HEREBY CONFER upon my trustees the following powers, privileges, and immunities in addition to those conferred, or that may be conferred, upon gratuitous trustees by statute—viz. : Power either to leave the whole sums of money, funds and others of which my trust estate may consist at the time of my death, in the securities or investments in which the same are or may be then invested, or to lend out and invest the same and the income and produce thereof, or any part thereof, in the following securities—viz., upon heritable security in Scotland, including securities by heirs of entail over policies of insurance on the granter's life, and over his interest in the entailed estate, or upon the bonds, debentures, debenture stock, preference or guaranteed stock, shares, or other securities of any company in Great Britain, India, or in any of the British colonies or dependencies, or to lend the same to any company empowered to borrow money by Act of Parliament, or to invest the same in the purchase of lands, houses, or other heritable property, feu duties, or ground rents in Great Britain ; AND to SELL, VARY, and TRANSFER the said several securities and investments, as often as my trustees may think proper ; AS ALSO POWER to SELL and DISPOSE of all or any part of my said means and estate, and that either by public roup or private bargain, and for that purpose to enter into articles of roup and minutes of sale, to grant dispositions binding my estate and my heirs in absolute warrandice and all other usual clauses, and to execute all other deeds which may be necessary for rendering such sales effectual, and that as amply as I could have done myself ; AS ALSO POWER to APPOINT factors, cashiers, and law agents, either one of their own number or any other fit person, and to allow such factors, cashiers, and law agents suitable remuneration ; DECLARING ALWAYS that my trustees shall not be liable nor responsible in any manner of way for any loss or damage which may arise or be occasioned by the failure or depreciation in value of any of the funds or securities in which they may invest the whole or any part of the trust estate under their management or on which the same may be invested when they enter on the management thereof, nor shall they be liable either as trustees or executors for omissions or neglect of management or for the insolvency of debtors, or in respect of any appointment of any factor, cashier, and law agent under them : AND I hereby further

DECLARE that persons transacting with my trustees shall have no concern with the application of the sums of money paid to them nor with any of the conditions or purposes hereof, but shall be fully exonerated and secured by the discharges or other writings to be granted by my trustees in relation to the premises; AND I RESERVE full power to alter or revoke these presents; AND I DISPENSE with the delivery hereof: AND I CONSENT to registration hereof, and of any codicils hereto, for preservation.—IN WITNESS WHEREOF, &c.

Persons transacting with trustees to have no concern with application of monies paid to them.

### 5. Trust-Disposition and Settlement. (*Another form.*)

I, A (*designation*), having resolved to make the following settlement of my affairs, do hereby ASSIGN and DISPONE to L, M, N, and O, and to such other person or persons as I may hereafter nominate to act in the trust hereby created, or as shall be assumed into the said trust, or the acceptors or acceptor, and survivors or survivor of them, as trustees for the purposes after-mentioned (the said persons and their foresaids being hereinafter denominated "my trustees"), [L] the whole means and estate, heritable and moveable, real and personal, of what kind or nature soever, or wheresoever situated, which shall belong to me, or of which I shall have the power of disposal, at the time of my decease; with the whole vouchers and instructions, writs, and securities of and concerning my said estate; AND I hereby NOMINATE and APPOINT my said trustees to be my sole executors; BUT DECLARING that these presents are granted by me IN TRUST ALWAYS for the purposes after specified, viz.:—IN THE FIRST PLACE that my said trustees shall pay all my lawful debts, deathbed and funeral expenses, and the expense of executing this trust: IN THE SECOND PLACE, that my said trustees shall PAY [*m*] to C, my wife, in case she shall survive me, a free annuity of £200 sterling, during her life, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms which shall happen after my death for the half-year succeeding, and so forth half-yearly and termly during the life of the said C, with a fifth part more of each termly payment of liquidate penalty in case of failure in the punctual payment thereof, and with interest on each termly payment, at the rate of £5 per centum per annum, from the respective terms of payment until pay-

Inductive clause.  
Dispositive clause.

Purposes of the trust.  
1. Payment of debts and expenses, &c.  
2. Annuity to wife.

Declaration that the widow's annuity shall lapse on her marriage; but a capital sum shall then be paid to her.

ment thereof; **DECLARING** that if the said C shall again marry, then her right to the said annuity shall become *ipso facto* void and null, in the same manner as if she had been naturally dead; **AND** in that event I **APPOINT** the said trustees to pay to the said C the sum of £1000 sterling, and that at the first term of Whitsunday or Martinmas after such subsequent marriage, with interest thereon, at the rate of £5 per centum per annum, from said term till payment of the same. [*Or if the annuity is to be restricted in the event of a second marriage, substitute for the foregoing clause the following, viz.:*—To C, my wife, in case she shall survive me, a free annuity of £200 sterling during all the days of her life, if she shall so long continue unmarried; **BUT** if she shall marry again, then a free annuity of £100 sterling (to which the said annuity of £200 is hereby in that event, reduced and restricted), and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said annuity of £200 sterling at the first term of Whitsunday or Martinmas after my decease, and the first term's payment of the said annuity of £100 sterling at the first of these terms which shall happen after such subsequent marriage of the said C, for the half-year immediately succeeding, and so forth, half-yearly and termly thereafter, with a fifth part more of each termly payment of liquidate penalty in case of failure in the punctual payment thereof, and interest on each termly payment, at the rate of £5 per centum per annum, from and after the respective terms of payment until payment thereof:]

Clause specifying the amount of the principal and restricted annuities, terms of payment, &c.

The furniture to be given to the widow, with the exception of plate, which is to go to her in liferent, and to the eldest son in fee.

**AND** I direct my said trustees **LIKEWISE TO ASSIGN and CONVEY** to the said C, my wife, in case she shall survive me, the whole household furniture and plenishing of every description belonging to me, that may be in and about my dwelling-house at the time of my decease, including, *inter alia*, books, linen, and china, liquors, provisions, and other household effects; **EXCEPTING ONLY** the whole of my silver plate, which I hereby direct my said trustees to **ASSIGN and CONVEY** to the said C in liferent, for her liferent use allenary, and to \_\_\_\_\_, my eldest son, in fee: [*Or if the widow is merely to have the liferent of the furniture, instead of the foregoing clause, say*—**AND LIKEWISE TO ASSIGN and CONVEY** to the said C, my wife, in case she shall survive me, in liferent, for her liferent use allenary, the whole household furniture and plenishing of every description belonging to me, that may be in and about my

Assignment to the widow of the liferent of the furniture,

dwelling-house at the time of my decease, including, *inter alia*, books, plate, linen, pictures, prints, liquors, china, and other household effects; OF WHICH furniture and others I hereby direct an inventory to be made up and subscribed by my said wife; DECLARING that in case the said C shall again marry, the liferent right hereby given to her in and to the said furniture and others shall become *ipso facto* void and null, in the same manner as if the said C had

of which an inventory is to be made up. Declaration that the liferent shall cease on the widow's marriage.

been naturally dead, and that on the termination of the said liferent, either in manner above provided for or by the death of the said C, the said furniture and others shall form part of the residue of my said trust-estate and be disposed of by the said trustees accordingly.]

[If the widow will have right to a separate annuity from a public fund, or if the husband intends afterwards to purchase an annuity on her life, the following clause may be here inserted—DECLARING

FURTHER that the said provisions hereby given to the said C are in addition to, and over and above the annuity to which, if she shall survive me, she will have right from the Widows' Fund of the Society of X (or, that the annuity to which the said C, if she shall survive me, shall have right from the Widows' Fund of the Society of X shall be imputed *pro tanto* in part of the said provisions hereinbefore conceived in her favour): AND in case I shall hereafter purchase an annuity to be paid to the said C during her life, if she shall survive me, then and in that case I hereby DECLARE that such purchased annuity shall, if less than the annuity hereinbefore conceived in her favour, be imputed *pro tanto* in extinction thereof; or if equal to or greater than the said annuity, then the said purchased annuity shall

Declaration that the provisions given to the widow are, or are not, in addition to the annuities she may have right to from other funds.

be held entirely to extinguish the same:] AND I do hereby DECLARE that the provisions hereby given to the said C shall be accepted of by her in full satisfaction to her of all terce of land, *jus relictæ*, and every other claim competent to her by and through my decease in any manner of way, excepting only her claims for mournings and aliment, to the first term of Martinmas or Whitsunday after my decease, both of which are hereby reserved to her. [But if there exist a contract of marriage between the testator and his wife, and if the annuity is to be given to her in addition to the provisions in that contract, instead of the above declaration (which in that case becomes unnecessary from a similar one being contained in the marriage settlement), the following may be substituted—Which provisions hereby conceived in favour of the said C, my spouse, are

Declaration that the provisions given to widow are in full of all her legal claims except mourning and aliment.

Declaration that the provisions are given in addition to those contained in marriage-contract.

3. Provisions to the children.

Clause giving the provisions to the children jointly in equal shares, or as may be apportioned.

Shares to be payable at twenty-one, or marriage.

Vesting not to take place till terms of payment; and right of predecessor to accresce to the survivors.

hereby declared to be in addition to, and over and above the several provisions in her favour contained in the contract of marriage entered into between her and me, dated the                      day of                      ; which provisions are to continue in full force in all points, and from which these presents are in no wise to derogate]: [n] IN THE THIRD PLACE, that my said trustees shall MAKE PAYMENT[o] to R, S, T, and U, my children, and to any other child or children to be hereafter lawfully born to me, or their lawful issue in their place [excepting always                      , my eldest son, or such other son as shall be entitled to the residue of my said estate (a)], the sum of £10,000 sterling, and that in such proportions and at such terms as I may appoint by any writing under my hand; and failing such appointment, then to said children born and to be born as aforesaid, equally amongst them; and that at and upon the respective terms, ages, and events after specified, viz.—if my said children, born or to be born as aforesaid, or any of them, shall at the time of my decease have attained the age of twenty-one years, then the share or shares of the foresaid sum provided to them, or to such one or more of them as shall then have attained the said age, shall become payable to him, her, or them at the first term of Whitsunday or Martinmas thereafter; but if all my said children have not attained majority at the time of my death, then the share or respective shares of the foresaid sum provided to my said children, born and to be born, or to such one or more of them as shall not at the term foresaid have attained the said age, shall in the case of sons become payable to them respectively on their respectively attaining the age of twenty-one years, and in the case of daughters on their respectively attaining that age or being married, whichever event shall first occur; together with the interest of the same, at the rate of £5 per centum per annum, from the said respective terms of payment during the not-payment; DECLARING that in case any of my said children born and to be born as aforesaid shall die before me, or before attaining the said age without leaving issue, then both the original share or shares of the child or children so dying, and the share or shares accrescing to him, her, or them by virtue of the present clause, shall

(a) In the case of a bond of provision in virtue of an entail, the exception may be as follows:—"Excepting always                      , my eldest son, succeeding to "the estate of X, or such other son as shall, through the failure of the heirs "prior to him, succeed to the said estate, before the term of payment hereinafter "specified of the provision intended for him."

accresce to the survivors or survivor of my said children (excepting always my said eldest son, or such other son as shall be entitled to the residue as aforesaid, so long as a child, or issue of a child, other than such eldest son or other son aforesaid, shall survive), and shall be divided equally among them, if more than one, and shall be payable at and upon the same terms, ages, or events as hereinbefore directed with reference to his, her, or their original share or shares;

PROVIDING, NEVERTHELESS, that in case the child or children so dying shall have left lawful issue, such issue shall be entitled to the share or shares, both original and accrescing, of the foresaid sum of money to which their deceased parent or parents would have been entitled had he or they survived me and attained said age; and the same shall become payable to such issue at the first term of Whitsunday or Martinmas after my decease, or the decease of their parent or respective parents, whichever of these events shall happen last:

The issue of such as predecease to receive their parent's shares.

AND FURTHER, it shall be in the power of the said trustees in their discretion to pay and apply the income of such share or shares of the foresaid sum as shall not have become payable as aforesaid for and towards the maintenance and education of such of my said children as shall presumptively be entitled to the said share or shares, until the same respectively shall become payable to them;

Provisions for maintenance and education of the children.

and to apply and dispose of any parts of the share or shares of the foresaid sum provided to such of my said sons born and to be born as shall be under the said age of twenty-one years complete, for apprenticing or placing him or them in any profession, business, or employment, or for his or their instruction therein, or otherwise for his or their benefit or advancement in the world, notwithstanding such share or shares shall not then have become payable:

Power to apply part of the shares for their advancement in the world.

AND it is hereby DECLARED that in case I shall during my life advance or pay any sum or sums of money for or to any of my said sons, born or to be born, for their benefit or advancement in the world, or for or to any of my daughters, born or to be born, on her or their marriage or respective marriages, and for which I shall have taken vouchers from him, her, or them, or debited him, her, or them under my hand in any account-book or writing, the same shall be deducted, without interest, from his, her, or their share or respective shares of the foresaid sum, and he, she, or they, or his, her, or their issue, shall be entitled to ask and receive the balance only of the said share or respective shares: AND in respect the said

Sums paid by the testator for a similar purpose to be deducted.

Declaration  
that the  
provisions  
are in full  
of all legal  
claims.

Declaration  
that if the  
children  
repudiate  
the settle-  
ment, they  
shall receive  
only their  
legal pro-  
visions.

General  
clause  
settling  
residue on  
eldest son.

Reservation  
of power to  
alter.

Dispensa-  
tion with  
delivery.

T has already received from me the sum of £500 sterling, I do hereby direct the same to be deducted, without interest, from his share of the foresaid sum : WHICH PROVISIONS above written, conceived in favour of my said children, shall be accepted of by them, and the same are hereby declared to be, in full of all legitim, or others whatsoever, which they or any of them can ask or demand by and through my decease, or by and through the death of their mother (*or* by virtue of the contract of marriage betwixt her and me, *or* of bonds of provision formerly granted by me) or in any other manner of way : AND FURTHER, I do hereby PROVIDE and DECLARE that in case any of my said children shall repudiate this settlement, and claim their legal rights in place of the sums hereby provided to them respectively, or shall by any means prevent this settlement from taking effect, in whole or in part, then such child or children shall forfeit all right to any share or shares of that part of my estate and effects which I may freely dispose of by law, and they shall have right only to their respective legal rights ; AND the share or shares of such child or children shall in that event accresce and belong equally to my other children and the issue *per stirpes* of my other children predeceasing as aforesaid who shall abide by this settlement, and accept of the provisions herein contained, in the same manner and to the same effect as if such child or children so repudiating had predeceased the term of vesting of said share or shares without issue : [*p*] AND LASTLY, after fulfilling the whole of the foresaid purposes of trust, I DIRECT my said trustees to PAY, ASSIGN, and DISPONE the free residue and remainder of my estate, heritable and moveable, real and personal (but under burden always of the said annuity to the said C, and of her liferent of the said furniture and others above specified, in case she shall be alive at the time), to the said , my eldest son, whom failing by his predeceasing me to his issue ; whom failing, to my whole children, living at my death, and the issue of any child who may have predeceased me equally *per stirpes* among them : [*q*] AND I hereby NOMINATE and APPOINT my trustees to be tutors and curators of such of my children as may be in pupillarity or minority at the time of my death : AND I hereby RESERVE to myself full power at any time of my life to alter or revoke these presents, in whole or in part, as I shall think proper : AND I DISPENSE with delivery hereof : AND I CONSENT to the registration hereof, and of any codicils hereto, for preservation.—IN WITNESS WHEREOF, &c.

### 6. Clauses of Provision to Children to be inserted in Trust Settlements.

#### (A.) *Provision to the Children jointly, payable at the first term of Whitsunday or Martinmas after the Testator's death.*(a)

To R, S, and T, my younger children, the sum of £2000 sterling, Clause giving the provision to the children, either equally or in certain proportions. equally among them (*or*, in the following proportions, viz.—to R £1000, to S £500, and to T £500 sterling), and that at the first term of Whitsunday or Martinmas after my decease, with a fifth part more of liquidate penalty in case of failure, and the interest of the said sum, at the rate of £5 per centum per annum, from the said term of payment until payment thereof: DECLARING that, in case any of my said children shall predecease me without leaving lawful issue, With right of accrescence to the survivors, then the share or shares of the foresaid sum provided or intended for the child or children so predeceasing shall accresce to the survivor or survivors, equally among them, share and share alike (*or*, and be divided among them *pro rata*, proportionally to the respective shares hereby given to such survivors), and the same shall become payable to him or them at the said first term of Whitsunday or Martinmas after my decease: PROVIDING, NEVERTHELESS, that if the child or children so dying shall have left lawful issue, such issue shall be and to the issue of such as predecease. entitled to such share or shares, both original and accreting, as their deceased parent or parents would have been entitled to if alive.

#### (B.) *Provisions to Children severally.*(b)

To R the sum of £2000 sterling, payable at the first term of Whitsunday or Martinmas after my decease, with the interest of the said sum, at the rate of £5 per centum per annum, from the said term of payment during the not-payment thereof. Item, to S, the like sum of £2000 sterling, and that at the first term of Whitsunday or Martinmas after my decease, if he shall then have attained the age of twenty-one years complete; but if he shall not then have attained Clauses giving—  
1. A capital sum to a child, payable at the testator's death.  
2. A capital sum to a son, payable at the testator's death, or at twenty-one, with his maintenance and education in the meantime.

(a) This clause may be substituted for the clause from [o] to [p], in Example 5, *supra*.

(b) Provisions may be given to the children individually, in any of the forms exemplified under the head of legacies; and to these we therefore refer as other styles of such provisions. The form of provision here given may be substituted for the clause from [o] to [p], in Example 5, *supra*.

that age, then at the first term of Whitsunday or Martinmas after he shall have attained the said age, with the interest of the said sum, at the rate aforesaid, from the said term of payment until payment thereof: AND until the said provision shall become payable, the said trustees shall out of the said provision or income thereof maintain, clothe, and educate the said S in a manner suitable to his station (*or*, shall pay and apply a sum, not exceeding £60 per annum, for and towards the maintenance and education of the said S): AND it shall be in the power of the said trustees, at their discretion, to apply and dispose of any part of the foresaid provision conceived in favour of the said S, not exceeding the sum of £500 sterling, for the purpose of placing him out in any profession, business, or employment, or otherwise for his benefit or advancement in the world, notwithstanding the said provision shall not have become payable to him as

3. A capital sum to a daughter, payable on her marriage, with an annuity till then; and power to test on part of the sum if she does not marry.

aforesaid. Item, to T, my eldest daughter, in the event of her marrying, the sum of £1000 sterling, payable at the first term of Whitsunday or Martinmas after her marriage, with a fifth part more of liquidate penalty in case of failure, and interest, at the rate aforesaid, on the said principal sum from the said term of payment during the not-payment thereof; AND so long as the said T shall continue unmarried, I direct the trustees to pay to her a free annuity of £30 sterling, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said annuity at the first of these terms after my decease for the half-year succeeding, and so forth half-yearly and termly during the life of the said T, or so long as she shall continue unmarried; AND in case the said T shall not marry, she shall have full power to dispose, by a will or settlement to be executed by her, of any part of the foresaid provision hereby conceived in her favour, not exceeding £500 sterling, to and in favour of such person or persons as she may think fit, to whom the trustees shall make payment of the same after her death. Item, to U, my second daughter, during her life, an annuity of £100 sterling, payable at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms after my decease for the half-year succeeding, and so forth half-yearly and termly thereafter during the life of the said U, with the interest, at the rate aforesaid, of each half-yearly portion from the respective terms of payment during the not-payment of the same: AND after the decease of the said U, my daughter, the

4. Annuity to a daughter.

said trustees shall make payment to the child or children to be lawfully procreated of her body of the sum of £2000 sterling, and that in such proportions and at such terms as the said U may appoint by a writing under her hand; and failing such appointment, the same shall be payable to the said children in the shares, at the terms, and under the declaration after-mentioned, viz.—If there shall be more than one child, equally among them; and if but one, then to such child; the shares of the daughters to be paid to them on their respectively attaining the age of twenty-one years, or on their respective marriages, whichever shall first happen; and the shares of the sons to be paid to them on their respectively arriving at the age of twenty-one years; the same to be so paid in case such children shall attain the said age, or be so married, after the decease of the said U; but as to such of them as shall arrive at the said age or be married in the lifetime of the said U, the payment of their shares shall be made at the first term of Whitsunday or Martinmas after her decease; DECLARING that if any of such children, being sons, shall die under the said age of twenty-one years, and without leaving lawful issue, or being daughters, under the said age and unmarried, then the shares of the foresaid sum, both original and accrescing, provided or intended for the children so dying, shall accresce to the survivor or survivors, equally among them, and shall become payable at such times as their original shares are above directed to become payable; DECLARING always that the lawful issue of any predeceasing child shall succeed to the share, both original and accrescing to which their parent would have become entitled had he attained said age, or, being a daughter, had married; AND the said trustees shall, after the decease of the said U, my daughter, pay and apply the interest of such of the shares of the said sum as shall not have become payable, by virtue of the appointment of the said U or of these presents, or so much thereof as may be necessary, towards the maintenance and education of the children presumptively entitled to the same, and that till the said shares respectively shall become payable to them.

And a capital sum to her children, to be divided by her among them; and failing such division, to be paid to them equally, at twenty-one, or marriage.

With right of accrescence to the survivors.

7. **Clauses settling Residue, to be inserted in Trust Settlements.**(A.) *Clause giving the Residue to the Granter's Children  
at Majority or Marriage.*(a)

To become  
vested at  
twenty-one,  
or marriage.

With right  
of accre-  
scent to  
the sur-  
vivors.

AND LASTLY, with regard to the free residue of my said estate, I appoint my said trustees to PAY and CONVEY the same to and in favour of the said R, S, T, and U, and any other lawful child or children to be hereafter born to me (excepting always the said , my eldest son, or such other son as shall, at the term of payment herein specified of the share of the said residue intended for him, be found to have succeeded to my said lands and estate of X), equally among them, if more than one (*or, if desired*, in such a manner that each of my sons shall receive double the share of each of my daughters); and if there shall be but one such child, then to pay and convey the whole to such child; the share or shares of the daughter or daughters to become vested in her or them respectively on her or their respectively attaining the age of twenty-one years, or being married, whichever event shall first happen; and the share or shares of the son or sons to become vested in him or them respectively; on his or their respectively attaining the age of twenty-one years; and to be paid and conveyed at the respective ages and times aforesaid to such of my said children as shall arrive at or attain the same after my decease; but as to such of them as shall arrive at or attain the respective ages and times aforesaid in my lifetime, then his, her, or their share or shares shall be paid and conveyed to him, her, or them as soon as convenient after my decease: AND I do hereby DECLARE that if any one or more of my said children shall die before his, her, or their share or shares shall have vested as above provided without leaving lawful issue, then his, her, or their share or shares shall accrete to the survivors or survivor, equally amongst them (*or, if desired*, in such manner that each son shall receive double the share of each daughter); and the same shall become vested and payable at such time or times as his, her, or their original share or shares are hereby directed to become vested, and payable, as aforesaid:

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(a) This clause may be substituted for the clause between [p] and [q], in Example 5, *supra*.

BUT DECLARING that in case any one or more of my said children shall die before the said share or shares intended for him, her, or them respectively shall vest, leaving lawful issue, such issue shall be entitled to the share or shares, whether original or accreting, to which their parent or respective parents would have been entitled if he, she, or they had lived to acquire a vested interest therein; such share or shares to be payable to such issue respectively at the first term of Whitsunday or Martinmas after my death, or the death of their parent or respective parents, whichever event shall happen last: AND FURTHER, I APPOINT the said trustees to pay and apply Provision for maintenance. the income of the share or shares of such of my said children as shall not have acquired a vested interest therein (*or say*, to pay and apply a sum not exceeding £100 per annum each, out of the income of the share or shares of such of my children as shall not have acquired a vested interest therein), for or towards his, her, or their maintenance and education respectively, until the same respectively shall become vested and payable as aforesaid: DECLARING that it shall be Power to apply the presumptive shares of the sons for their advancement in the world. lawful to and in the power of my said trustees, at their discretion, to apply and dispose of any part or parts of the presumptive share or shares for the time being of any son or sons under the age of twenty-one years, of and in the residue aforesaid, for placing him or them out in any profession, business, or employment, or for his or their instruction therein, or otherwise for his or their benefit or advancement in the world: AND in case all my said children Provision for the case of the death of all the children. (except the said , or the son who shall be entitled to my said lands and estate of X), shall die without any of them having acquired a vested interest in the said residue and without leaving lawful issue, then I APPOINT the said trustees to PAY and CONVEY the same to and in favour of the said , or the son who shall so be entitled to succeed to my said lands and estate of X, and his heirs or assignees.

(B.) *Another Form of the Clause, giving the Residue to the Granter's Children at Majority or Marriage.(a)*

AND LASTLY, the residue of my said estate, heritable and moveable, hereby conveyed, shall be held and retained by my said trustees for

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(a) This clause may be substituted for the preceding form (A), or for the clause from [p] to [q], in Example 5, *supra*.

Provision of the residue to the children alive at the testator's death, who shall attain twenty-one, or be married.

behoo of such of my lawful children (excepting always the said , my eldest son, or such other son as shall, at the term of payment herein mentioned of his share of the said residue, have succeeded to my said lands and estate of X), as, being a son or sons, shall at the time of my death have attained or shall afterwards attain the age of twenty-one years, or being a daughter or daughters, shall then have attained or shall afterwards attain the like age, or be married under that age, and that equally among them, if there shall be more than one (or, in such a manner and so as that the son or each of my sons shall receive double the share of the daughter or each of my daughters), and if there shall be but one such child who shall attain the said age, or being a daughter, shall marry under that age, then such child shall receive the whole; BUT DECLARING that if any one or more of my said children shall die before me or before the share or shares intended for him, her, or them shall have become vested, leaving lawful issue, such issue shall be entitled to the share or shares, both original and accrescing, which their parent or respective parents would have taken had he, she, or they, survived me and attained said age, and the same shall become payable and transferable to them at the first term of Whitsunday or Martinmas after the time at which such share or shares would have become payable to their parent or parents, if in life: AND I APPOINT my said trustees to PAY and CONVEY the residue foresaid accordingly as soon as circumstances will permit: AND FURTHER, I APPOINT my said trustees to PAY and APPLY (or say, to pay and apply a sum not exceeding £100 per annum out of) the income of the presumptive share or shares for the time being of the child or children who shall not have attained the age or time foresaid, of and in the said residue, for or towards the maintenance and education of such child or children respectively, until he, she, or they shall acquire a vested interest therein, or die, whichever event shall first happen. (*Insert here, if desired, clauses empowering the trustees to apply the presumptive shares for fitting out the children in the world, and providing for the case of the death of all the children, as in Example (A), supra.*)

Provision for maintenance.

(C.) *Clause giving the Residue to the Granter's Children when the youngest attains Majority.*(a)

AND LASTLY, I DIRECT my said trustees to PAY and CONVEY the free residue of my said estate to the lawful children of my body who shall be alive when the youngest of them, or of the survivors of them, shall attain the age of twenty-one years complete, and that equally between them, if there shall be more than one; but if there be but one child who shall attain the said age, or if the elder child or children shall die before the youngest shall attain the age foresaid, then the whole to such child on his or her attaining the age of twenty-one years: AND I do hereby DECLARE that in case any one or more of my said children shall die before the said residue shall become payable as aforesaid, leaving lawful issue, who shall be living at the foresaid time of payment, then such issue shall be entitled to the share or respective shares, both original and accreting to which his, her, or their parent or parents would have been entitled if alive; AND I APPOINT my said trustees to PAY and CONVEY the same to him, her, or them accordingly: AND until the said residue shall become payable as aforesaid, I APPOINT my said trustees to PAY and APPLY the income of the presumptive share or shares for the time being of my said child or children, or of their issue as aforesaid of and in the said residue, or such part or parts thereof as they shall think fit, for and towards the maintenance and education of such child or children or of their issue as aforesaid respectively, until he, she, or they shall acquire a vested interest therein, or die, whichever event shall first happen; DECLARING that it shall be in the power of the said trustees, at their discretion, to apply and dispose of any part or parts of the presumptive share or shares of any son or sons, or of their issue as aforesaid, of and in the residue foresaid, for placing him or them out in any profession, business, or employment, or for his or their instruction therein, or otherwise for his or their benefit or advancement in the world, notwithstanding such share or shares shall not have become payable as aforesaid. (*If advances are to be allowed to any daughter who may marry before the vesting of her share, here*

Clause giving the residue to such children as shall be alive when the youngest attains twenty-one.

Declaration that the issue of such as predecease shall take their parents' shares.

Power to apply the presumptive shares of the sons for their advancement in the world.

(a) This clause may be substituted for either of the preceding Examples (A) or (B), or for the clause from [p] to [q], in Example 5, *supra*.

Provision  
for the case  
of the death  
of all the  
children.

*insert the necessary clause*): AND in case all my said children shall die before attaining the age of twenty-one years, or, if any of them shall attain that age, in case the whole of them shall die before the youngest shall attain the age of twenty-one years, and without leaving lawful issue, then I APPOINT the said trustees to PAY and CONVEY the said residue to and in favour of G, and his heirs or assignees whomsoever.

(D.) *Clause giving the Residue to an Eldest or only Son at the Age of Twenty-five, with a Destination-Over.* (a)

Provision  
of the  
residue to a  
son, when  
he attains  
twenty-five,  
under  
burden of  
annuities;

AND LASTLY, with regard to the residue of my said estate, I APPOINT my said trustees to hold and retain the same until F, my only (*or* eldest) son, shall attain the age of twenty-five years, and at and upon his attaining that age, I DIRECT my said trustees to PAY and CONVEY the whole of the said residue to him, provided he, the said F, shall give such security and execute such deeds and obligations as shall, to the satisfaction of my said trustees, sufficiently secure the regular payment of the annuities foresaid, if the same shall then be due and payable: AND in case the said F shall not have attained the age of twenty-five years at the time of my decease, the said trustees shall PAY and APPLY out of the income of the said residue, for and towards the maintenance and education of the said F, any sum, not exceeding £200 per annum, until he attain the age of twenty-one years; and after he shall have attained that age, and until he shall have completed his twenty-fifth year, any sum, not exceeding £300 per annum, as the said trustees may deem suitable to his situation: AND in case the said F shall die without attaining the age of twenty-five years, I DIRECT my said trustees to PAY and CONVEY the said residue to the lawful children of the said F, who shall attain the age of twenty-one years, equally among them, if there shall be more than one; but if there shall be but one such child who shall attain the age of twenty-one, then the whole to such child, the same to be so paid and conveyed at and upon his, her, or their respectively attaining the said age:

Allowance  
to the son,  
till he  
attains  
twenty-five,

and if he die  
before  
twenty-five,  
to his  
children  
equally at  
majority;

(a) This clause may be substituted for any of the three preceding Examples, (A), or (B), or (C), or for the clause from [p] to [q], in Example 5, *supra*. The result here, owing to the form of the gift and of the destination-over, is that vesting in F is suspended until he attains the age of twenty-five.

AND until such child or children respectively shall attain the age of twenty-one years, I APPOINT my said trustees to PAY and APPLY the income of the share or shares provided or intended for him, her, or them respectively for and towards his, her, or their maintenance and education respectively: AND in case there shall be no lawful child of the said F living at his decease, or born thereafter, or there being one or more such child or children, in case he, she, or they shall die without attaining the age or respective ages of twenty-one years, and without leaving lawful issue,<sup>(a)</sup> then I APPOINT the said trustees to PAY and CONVEY the said residue to and in favour of G, whom failing, his heirs whomsoever; PROVIDED ALWAYS that the person or persons to whom the said residue shall be conveyed shall give the security and execute the deeds and obligations above mentioned. *(Or if it be meant to give the residue to the second son, on the failure of the eldest, then the clause will be expressed in these terms:—*To G, my second son, at and upon his attaining the age of twenty-five years, whom failing without attaining the said age, to his child or children, payable at the same periods, and under the same conditions, provisions, and declarations in all respects, as are above mentioned with regard to the succession of my eldest son, and his child or children.)

*with provision for their maintenance.*

*If the son die without issue, provision of the residue to a stranger:*

*or to the next son.*

*(E.) Clause giving the Residue to a Daughter at Majority or Marriage.(b)*

AND LASTLY, my said trustees shall, out of the income of my said estate, PAY and APPLY the sum of £100 a-year to and for the maintenance and education of F, my daughter, in such manner as they shall think fit, until she attains the age of twenty-one years, or is married, whichever event shall first happen: AND upon her attaining the age of twenty-one years, or the day of her marriage, whichever

*Provision for maintenance till twenty-one, or marriage;*

*and then to transfer the residue to her.*

(a) This clause might be expressed more shortly thus:—"AND failing the said F and his lawful children as aforesaid, I APPOINT the said trustees to PAY and CONVEY the said residue to G, whom failing, his heirs or assignees whomsoever." As expressed, however, in these terms, the clause leaves it doubtful whether G is intended to be a conditional institute or substitute—an ambiguity which is avoided in the text. Indeed, it is better in all cases to express the clauses of deeds specially, for the precise import of general terms is not so well defined and understood.

(b) This clause may be substituted for any of the four preceding Examples, (A), (B), (C), or (D), or for the clause from [p] to [q], in Example 5, *supra*.

first happens, my said trustees shall PAY and CONVEY the whole residue of my said estate to the said F: BUT in case the said F shall die without attaining the age of twenty-one years, and unmarried, then I LEAVE and BEQUEATH to , &c. (here specify legacies): AND after payment of the said legacies, I DIRECT my said trustees to PAY and CONVEY the whole residue of my said estate to my own nearest heirs or assignees whomsoever.

Provision  
for the case  
of her death  
before  
twenty-one,  
unmarried.

(F.) *Clause giving the Residue to one in Liferent, and to another in Fee.*(a)

AND LASTLY, with regard to the residue of my said estate, I DIRECT my said trustees to (b) PAY to F, or to AUTHORISE and EMPOWER him to uplift and receive the income of the same during his life for his liferent alimentary use only. (If the annuitant be a female, and if thought necessary, add, EXCLUSIVE ALWAYS of the *jus mariti*, right of administration, and all other legal rights of any husband whom the said F has married or may marry, to whose control or for whose debts or engagements the same shall not be subject or liable; DECLARING that the receipts of the said F, or of those legally authorised by her, shall, notwithstanding her marriage, be good and sufficient discharges for the same.) AND at the decease of the said F, I DIRECT the said trustees to PAY and CONVEY the said residue to G, or his heirs or assignees whomsoever.

Provision of  
the liferent.

Provision of  
the fee.

In this clause the fee of the residue may be conveyed in any of the forms given above; and we refer, therefore, to them as examples of some of the variations of which this clause is susceptible. When the fee, however, is given to children, it may sometimes be thought proper to express the clause thus:—

AND at the decease of the said F, to PAY and CONVEY the said residue to such one child or such children of the said F, at such ages or times, in such shares, and in such manner and form, and

Provision of  
the fee to  
children.

(a) This clause may be substituted for any of the five preceding forms, or for the clause from [p] to [q], in Example 5, *supra*.

(b) The following part of the clause may be expressed more shortly thus:—“TO PAY and CONVEY the same to F in liferent and to G in fee.” But, according to this form, the trustees would be bound to convey the residue to the fiar, even during the subsistence of the liferenter's right—an arrangement which, in many cases, may be extremely inexpedient.

either in *liferent* or in fee as the said F shall, by a writing under his hand, direct and appoint; AND failing such direction and appointment, to and in favour of the lawful child or whole lawful children of the said F, equally among them, &c.

The remainder of the clause will be similar to those in the preceding examples, *mutatis mutandis*; and if it be thought expedient to authorise the *liferenter* to burden the estate, either for provisions to his younger children where the *fiar* is the eldest son, or with legacies, this may be accomplished by a clause of the following form:—

PROVIDING ALWAYS that it shall be lawful to the said F, by a writing or writings under his hand, to charge and burden the residue of my said estate above conveyed, to an extent not exceeding the sum of £2000 sterling, payable after his death, to and in favour of such person or persons as he, the said F, shall think fit, and I appoint my said trustees to pay the same to the said person or persons accordingly. (*Or say,*)

PROVIDING ALWAYS that it shall be lawful to the said F, by a writing or writings under his hand, to charge and burden the residue of my said estate above conveyed with the payment of any sum or sums of money for behoof of his lawful child or children (other than and except such child as shall at the time of payment of the said provision or share of the said provision originally intended for him or her be entitled to the fee of the said residue), such sum or sums not exceeding the amounts after specified, viz.—If there shall be only one such child, not exceeding the sum of £2000 sterling for his or her provision; if there shall be two such children, not exceeding £4000 for the provisions of such two children; if there shall be three such children, not exceeding £6000 for the provisions of such three children; and if there shall be four or more such children, not exceeding £8000 for the provisions of such four or more of them; such provision or provisions respectively to be payable to such child or children at such age or time, or such ages or times, and (if more than one) in such shares and proportions, and either in *liferent* or in fee, as the said F shall deem prudent and expedient, and by such writing or writings shall direct and appoint; but so, nevertheless, that if at the time of payment such children so entitled to have provisions as aforesaid shall be reduced to three, such three children shall not be entitled to more than £6000 among them for their respective provisions; and if they shall be reduced to two, such

Clause empowering the *liferenter* to burden the estate with a certain sum.

Clause empowering the *liferenter* to burden the estate in favour of his children.

AND failing the said O, by non-acceptance, death, or otherwise, then such other trustee, or the first of such other trustees, as shall be nominated and assumed [in manner after specified], shall have the sole power to execute and manage the said trust in manner foresaid; AND so forth, in succession, through the whole of such trustees as shall be so nominated and assumed.

In expressing the other parts of the deed, the words "trustee or "trustees," will, where they occur, be altered into "the acting trustee for "the time being." Any other variations are obvious.

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#### SECTION IV

### BONDS OF PROVISION TO WIVES AND CHILDREN

The deeds of which the forms are given in the preceding part of this Title, being all of them general settlements, refer to the granter's whole affairs. It is not uncommon, however, for persons to execute what may be termed partial settlements, being such as are limited to one specific purpose. Of this nature are Bonds of Provision to Wives and Children. Of these we shall give some examples, beginning with one in the more ordinary form.

#### 1. Bond of Provision.

Inductive  
clause.  
Obligation.

I, A, FOR the love, favour, and affection which I have and bear to \_\_\_\_\_, DO hereby BIND myself, and my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, TO MAKE PAYMENT to \_\_\_\_\_, &c. (*Here specify the provisions, whether to the granter's widow, children, or others, according to the forms above exemplified.*) *If it be intended that the above provisions are to come in place of the legal rights of the widow and children, here add—*DECLARING ALWAYS that the provisions hereby made in favour of my said wife [and children] are and shall be in full satisfaction to her [and them respectively] of terce [and] *jus relictæ* [legitim], and all else that she [or they] could claim by or through my death; AND DECLARING further that the said provisions are in place of, and shall not be exigible in addition to, the provisions made by me in my antenuptial contract of marriage

Declaration  
that the  
provision is  
in lieu of  
legal rights.

with the said \_\_\_\_\_, dated the \_\_\_\_\_, (or other deed).(a) Reserved power to alter.  
 RESERVING NEVERTHELESS full power to myself at any time of my life to revoke, alter, or innovate these presents, in whole or in part, as I shall think fit; AND I DISPENSE with the delivery hereof.(b) Dispensation with delivery.  
 AND I CONSENT to the registration hereof for preservation (if the deed is to be delivered, and the payments to be exigible during the granter's lifetime, add, and execution).—IN WITNESS WHEREOF, &c.

In marriage-contracts there is usually a power given to the husband to divide the sum provided to the children of the marriage in such proportions as he may see fit. This power is sometimes exercised by means of a bond of provision, in executing which the father may take the opportunity to increase the provisions given by the contract. The following style embraces both of these objects, and may at the same time, by a slight and obvious alteration, be made to serve for either. See also Example 10, p. 633.

## 2. Bond of Provision following on and exercising a Power of Division in a Contract of Marriage.

I, A, CONSIDERING that by contract of marriage, bearing date Narrative. the \_\_\_\_\_, entered into between me and W, my spouse, I BOUND and OBLIGED myself, my heirs, executors, and successors (c) to make payment to the children to be procreated of my marriage with her, of the sum of £5000 sterling at the first term of Whitsunday or Martinmas after my decease, with interest thereon till paid, and a fifth part more of liquidate penalty in case of failure; BUT with this DECLARATION, that it should be in my power, by a deed or writing under my hand, to divide the said sum among my said children, in such proportions as I should see fit, all as more fully specified in said contract of marriage: AND SEEING that there are Subsumption. three children of my said marriage, named R, S, and T, and that I am desirous not only to exercise the said power of division, but to make an addition of the sum of £1000 sterling to the foresaid provision; THEREFORE I DO hereby BIND myself and my foresaids to Obligation.

(a) Where the granter of the deed has already granted provisions to the same persons in his contract of marriage or in a prior settlement, a clause to this effect should be inserted where the provisions are not meant to be cumulative.

(b) If the deed is to be delivered, and is intended to take effect during the lifetime of the granter, the reserved power to alter, and the dispensation with the delivery, will, of course, be omitted.

(c) This narrative ought to be exactly in terms of the contract of marriage.

Reserved  
power to  
alter.Dispensa-  
tion with  
delivery.

MAKE PAYMENT to \_\_\_\_\_, &c. (*Here specify the proportions of the joint sum of £6000 to be paid to the different children, with the terms of payment, &c., agreeably to the forms exemplified above, taking care that the power is exercised in precise conformity with the contract of marriage.*) [RESERVING NEVERTHELESS full power and liberty to me at any time of my life to revoke or alter these presents, in whole or in part, as I shall think fit; AND I DISPENSE with the delivery hereof.(a)] AND I CONSENT to the registration hereof for preservation (*if the deed is to be delivered, and payment to be exigible during the granter's lifetime, add, and execution*).—IN WITNESS WHEREOF, &c.

Entailed proprietors are entitled, by virtue either of the entail itself, when it contains the necessary powers, or of the Aberdeen Act (5 Geo. IV. c. 87), and subsequent Entail Statutes, to grant provisions to their wives or husbands, and children. Of the forms in which such provisions are granted we shall give examples, beginning with those where the granter wishes to proceed under the powers contained in the entail.

### 3. Bond of Provision to Children in terms of an Entail.

Narrative.

I, A OF X, in the County of \_\_\_\_\_, CONSIDERING that I am heir of entail infest and in possession of the said estate of X, but with and under the conditions, provisions, declarations, reservations, and clauses prohibitory, irritant, and resolute, contained in the deed of entail thereof, dated the \_\_\_\_\_ day of \_\_\_\_\_, and recorded in the Register of Entails the \_\_\_\_\_ day of \_\_\_\_\_, and in the Books of Council and Session the \_\_\_\_\_ day of \_\_\_\_\_, granted by the deceased W of X to and in favour of himself and the heirs-male of his body, whom failing, the other heirs of entail and substitutes therein mentioned; which deed of entail contains, *inter alia*,(b) reserved power and liberty to the heirs and members of tailzie therein mentioned to provide their children, other than the heir, in such a sum as they should think proper, such provision never exceeding the sum of £5000 sterling;

(a) See note (b) to preceding Example.

(b) An entailed proprietor's powers, as expressed in the entail and in the investitures in favour of himself, ought to be in identical terms, but if they do not correspond, the conveyancer must consider with care how far the terms of the entail may have been effectually altered by the investitures following thereon.

AND SEEING it is my intention, in virtue of the reserved power <sup>Subsumption.</sup> above-mentioned, to secure the sum of £5000 sterling to R, S, and T, being my whole children at present in existence, other than B, my eldest son and apparent heir in the said estate of X, and also to such other children as may yet be lawfully born to me: THEREFORE <sup>Obligation.</sup> I DO hereby BIND myself, and the heirs of entail succeeding to me in the said lands and estate of X [*if it is intended that any part of the provision, which cannot be made good against the entailed estate, shall be paid out of the granter's other estate, add here, and subsidarie* my heirs, executors, and representatives whomsoever], to PAY to (*here specify the provisions agreeably to the forms exemplified above*): (a) BUT WITH and UNDER the PROVISIONS and DECLARATIONS contained in the said deed of entail (*or otherwise, as the case may be*), dated and recorded as aforesaid: AND PROVIDING ALWAYS and DECLARING that the provisions before conceived in favour of my said children, so far as obligatory on the heirs of entail of the said estate of X, shall be effectual only so far as consistent with the terms and conditions of the said deed of entail and the titles under which I hold the same; and if they shall be found to be disconform thereto, they shall be, and are hereby, restricted so as to be precisely consistent with the powers thereby bestowed upon me [*if so wished, add—but reserving always in such event the claim of my said children for the remainder of the full sums hereby provided to them against my heirs, executors, and representatives whatsoever*], [x]: AND I hereby RESERVE to myself full <sup>Conditions under which the bond is granted.</sup> power to alter or revoke these presents, in whole or in part, as I shall think fit; AND I DISPENSE with the delivery hereof: AND I <sup>Reserved power to alter.</sup> CONSENT to the registration hereof for preservation.—IN WITNESS <sup>Dispensation with delivery.</sup> WHEREOF, &c.

#### 4. Bond of Annuity to a Wife in terms of an Entail.

Deeds of Entail usually permit the heirs in possession to provide their wives or husbands in provisions by way of annuity, payable out of the

(a) In adapting to bonds of provision granted by entailed proprietors the forms of provisions here referred to, great care must be taken that no declaration or condition is inserted inconsistent with the entail or with the granter's infestment. Thus, should the entail provide, as is sometimes the case, that the provisions must be paid off within a few years after the granter's death, the clause making them payable at majority or marriage will be inapplicable.

entailed estate, and styles suitable to these circumstances can readily be adapted from the forms of contracts of marriage where the heritable property of either party is entailed, which will be found in Title X. The following is the style of a Bond of Annuity to a Wife, granted under an entail which allows the heir in possession to grant such a deed.

Narrative.	<p>I, A OF X, in the County of _____, CONSIDERING that I am heir of entail infest and in possession of the said estate of X, but with and under the conditions, provisions, restrictions, limitations, and clauses prohibitory, irritant, and resolute, and with the powers and faculties specified and contained in the deed of entail thereof (<i>here describe the entail as in the preceding form, No. 3</i>). And in particular, with and under (a) the following provision and declaration, viz. :—That it shall and may be lawful, &amp;c. (<i>Here narrate the clause under authority of which the heir of entail is permitted to provide, for his widow.</i>)</p>
Subsumption.	<p>AND NOW SEEING that I am desirous of securing out of the rents of the said entailed estate a suitable annuity to C, my spouse, in case she survives me, THEREFORE, in virtue of the</p>
Obligation.	<p>powers conferred on me as aforesaid, I DO hereby BIND myself and the heirs of tailzie and provision succeeding to me in the said entailed estate of X, to MAKE PAYMENT to the said C, &amp;c. (<i>Take in here the clause giving the annuity in the form exemplified from [m], p. 603, to [n], p. 606.</i>)</p>
Conditions under which the bond is granted.	<p>BUT DECLARING ALWAYS that the foresaid annuity is granted with and under the provisions, conditions and declarations contained in the said deed of entail: AND it is further hereby expressly PROVIDED and DECLARED that the annuity hereby constituted in favour of the said C shall be effectual only in so far as the same is consistent with the conditions and limitations specified in the rights and infestments of the said lands and estate in my favour, and with the powers thereby vested in me; AND if the same shall be found to be disconform thereto, it is hereby DECLARED that the said annuity shall be restricted, and is accordingly hereby restricted, so as to be precisely conform to the powers competent to me:</p>
Reserved power to alter.	<p>AND I RESERVE full power to myself at any time of my life to alter or revoke these presents, in whole or in part, as I shall think fit:</p>
Dispensation with delivery.	<p>AND I DISPENSE with the delivery hereof: AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &amp;c.</p>

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(a) The entail must be carefully referred to. See notes to the preceding Example.

By the Aberdeen Act and subsequent Entail Acts, enlarged powers of providing for their husbands, wives, and children have been conferred upon the proprietors of entailed estates. See the remarks in Title X., and the various forms of contracts of marriage there given. Styles of Bonds of Provision to Children granted under the authority of the Acts are here given.

**5. Bond of Provision to Children, jointly, under Act 5 Geo. IV.  
c. 87, and subsequent Statutes.**

I, A OF X, in the County of \_\_\_\_\_, CONSIDERING that I am Narrative.  
 heir of entail infeft and in possession of the said estate of X, AND  
 THAT I am desirous of granting suitable provisions to my children  
 after named or their representatives, in exercise of the powers conferred  
 on heirs of entail by the Acts of Parliament after specified: THERE-  
 FORE, in virtue of "The Entail Provisions Act, 1824," "The Entail  
 "Amendment (Scotland) Act, 1875," "The Entail Amendment (Scot-  
 "land) Act, 1878," and "The Entail (Scotland) Act, 1882," I do hereby,  
 subject to the declarations and restrictions after-mentioned, BIND Obligation.  
 myself, and the heirs of entail succeeding to the foresaid estate of X,  
 and *subsidiarie* (a) my heirs, executors, and successors whomsoever  
 TO PAY [x] to and among such of my children R, S, T, and U not  
 succeeding to the said entailed estate, as shall be alive at the time  
 of my death, or to the representatives of any of them predeceasing  
 me who may be entitled to claim as in right of such predeceasing  
 child or children, including the lawful issue (other than the heir  
 succeeding to said estate) of any predeceasing child who, if he or she  
 had survived, would have been entitled to succeed to said entailed  
 estate, the sum of £10,000 sterling, payable one year after my death,  
 with a fifth part more of penalty in case of failure (b), and the interest  
 of the said provision, at the rate of £5 per centum per annum, from  
 the time of my death to the foresaid term of payment, and thereafter

Amount of  
the pro-  
vision.

(a) If it be intended that there shall be no order of discussion among the heirs of the granter, the word "*subsidiarie*" will be omitted, and the clause will run thus:—"BIND and OBLIGE myself, and the heirs of entail succeeding to the "foresaid estate of X, and my heirs, executors, and successors whomsoever, all jointly "and severally, without the necessity of discussing them in their order."

(b) It may perhaps be thought irregular to stipulate a penalty, since the Entail Provisions Act, 1824, does not expressly authorise it; but as this is a part of ordinary style, and as the declaration in sec. 7 of the statute takes away the danger of any injurious consequences, we have considered it expedient to retain it.

during the not-payment thereof: (a) AND THAT in the proportions following, viz.:—To each of the said R and S, my daughters, or their respective representatives aforesaid, the sum of £2000 sterling; and to each of the said T and U, my second and third sons, or their respective representatives aforesaid, the sum of £3000 sterling;

Clause of accrescence.

DECLARING that if any of the said children shall predecease me without leaving representatives entitled to claim as aforesaid, or shall, through the failure in my lifetime of the heirs prior to them, succeed on my death to the said entailed estate, the part or parts of the said principal sums, both original and accrescing under this clause, intended for the child or children whose right shall lapse by either of these events, shall belong and be payable to the remainder of my said children or their representatives aforesaid, in proportion to their respective provisions above-mentioned, in the same manner as if such lapsed share or shares had been originally

Restrictions in case of one or two children alone surviving.

settled on such children or representatives: PROVIDING always that if at the time of my death there are only two children entitled under this bond, or only the representatives of two such children predeceasing as aforesaid, or only one child and the representatives of a child predeceasing as aforesaid who may be entitled, or if there shall be only one child or only the issue of a predeceasing child who may be entitled, then, in the former of these cases, the said principal sum of £10,000, provided as aforesaid, shall be, and the same is hereby restricted to the sum of £7000 sterling, which sum shall be divided between those entitled thereto in proportion to the provisions above settled on them respectively; and in the latter of these cases, the foresaid sum shall be, and is hereby restricted to £3500 sterling, which sum shall be payable to the party entitled thereto in the manner above-mentioned; PROVIDING also, that if the sums above settled upon my said children and their foresaids in the several cases above-mentioned shall be found to exceed respectively three, two, or one year's free rent or value of the said entailed estate as the case may be, and as the amount of the said rent or value [m] shall be ascertained in the manner pointed out by the said Entail Provisions Act, 1824, then the said sums shall be, and are hereby

Restriction in case provision is excessive.

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(a) We have framed the obligation for interest in conformity with sec. 4 of the Act; but it should be observed that sec. 9 authorises interest to be charged from the term at which the right of the succeeding heir to the rent commences.

restricted (but so far only as they can be claimed from the said heirs of entail) so as to be consistent with the powers conferred by the said statute; reserving, in such event, the claim of my said children and their foresaids against my heirs-general for the remainder of the full sums hereby provided to them; AND DECLAR- Condition. ING that these provisions are granted by me, under all the conditions and provisions, and subject to all the restrictions, limitations, and declarations whatsoever contained in the said statutes. (*Here insert, if it be the granter's intention, that the provisions shall be in full of legitim, a clause to that effect as on p. 608, supra.*) AND I Reserved power to alter. hereby RESERVE to myself full power to alter or revoke these presents, in whole or in part, as I shall think fit; AND I Dispensation with delivery. DISPENSE with the delivery hereof; AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

#### 6. Bond of Provision to one Child.

If one child only is to be provided for, the above form will, of course, be greatly simplified. The introductory clauses may be taken from any of the preceding forms, *mutatis mutandis*, and the obligation will be :—

TO PAY to the said T, my second son (*or* my daughter), not succeeding to the said entailed estate, and in case of his (*or* her) predeceasing me, to his (*or* her) representatives entitled to claim in his (*or* her) right, and including his (*or* her) lawful issue, although the said T, if alive, would have succeeded to said estate, but excluding such one of said issue as may succeed to said estate, the sum of £ sterling, payable one year after my death, with a fifth part more of penalty in case of failure, and with interest, at the rate of £5 per centum per annum, from the time of my death to the fore-said term of payment, and thereafter during the not-payment of the said sum; DECLARING that if, through the failure in my lifetime of F, my (eldest) son, and of the heirs of his body, the said T shall at my death succeed as heir of entail to the foresaid estate, then and in that event this bond and obligation shall be void and null; PROVIDING also that if the sum above-mentioned shall be found to exceed one year's free rent or value of the said entailed estate (as the case may be, and as the amount thereof, &c., as at [m] in *Example 5*, supra,

*mutatis mutandis.* The alterations necessary when two children are to be provided for are obvious).

### 7. Bond of Provision to Children born and to be born.

It may often be necessary to grant provisions not only to children already in existence, but also to such children of the granter as may afterwards be born. In such cases the introductory clauses may be taken from any of the preceding forms, *mutatis mutandis*, and the obligation will be :—

TO PAY to and among such of the said R, S, T, and U, and such other child or children hereafter lawfully born to me, not succeeding to the said entailed estate, as shall be alive at the time of my death, or be thereafter born, &c. (*as in the first style*).

The clause of division may declare the children entitled to the principal sum provided, either equally among them or in such proportions, among the sons and daughters, as the granter shall appoint by a writing under his hand. In the subsequent clauses, when the children are mentioned, they may be described as—

My said children, born and to be born.

Provision will be made, as before, for the accreting of the shares of children predeceasing or succeeding upon the granter's death to the entailed estate.

### 8. Bond of Provision to Children severally, under the said Act.

In some cases, instead of providing a single sum, divisible among the children, it may be more advisable to provide to each child a specified sum, greater or less, according to their number. This form, when adopted, will render unnecessary the clauses of devolution and of eventual restriction in Example 5. The style may run as follows :—

Narrative.	I, A OF X, &c. ( <i>as on p. 627, down to [x]</i> ), TO PAY to each
Obligation.	of R, S, T, and U, and any other child or children to be here- after lawfully born to me, who shall not succeed to the said entailed estate, and who shall be alive at the time of my death, or be there- after born, or to the representatives of each of my said children who

shall predecease me, entitled to claim as in right of such predeceasing child, including the lawful issue (other than the heir succeeding to said estate), of any predeceasing child, who, had he or she survived, would have been entitled to succeed to the said entailed estate, the respective provisions after-mentioned, payable one year after my death, with a fifth part more of penalty in case of failure, and the interest, at the rate of £5 per centum per annum, of the said provisions from the time of my death to the foresaid term of payment, and thereafter during the not-payment thereof, viz.—In case there shall only be one such son, or his representatives aforesaid, and no daughter, nor representatives aforesaid of a daughter, entitled to claim under this bond, the sum of £                      ; if only one daughter, or her representatives, and no son, nor representatives of a son, the sum of £                      ; if two sons only, or their respective representatives, the sum of £                      each ; if two daughters only, or their respective representatives, the sum of £                      each ; if one son and one daughter only, or their respective representatives, the sum of £                      to the former, and of £                      to the latter ; and if there shall be three or more children, either sons or daughters, or their respective representatives, then the sum of £                      to each son, or to the representatives of each son, and of £                      to each daughter, or to the representatives of each daughter ; (a) BUT PROVIDING and DECLARING always, that the total amount to be paid under this bond shall not in any case exceed in whole the sum of £                      (*a sum not exceeding three years' free rent*), to which sum the claim of my said children and their foresaids, in whole, is hereby restricted ; and in case the said restriction shall become necessary, it is hereby declared and provided that the said sum of £                      shall be divided among the parties entitled thereto, in the proportion of the provisions last mentioned : PROVIDING also that if the said sum of £                      , which may be claimed in whole by three or more parties, or the sums which may be claimed by two parties, or by one party, as above provided, shall be found to exceed respectively three, two, or one year's free rent or value of the said entailed estate (as the case may

Sums provided.

Eventual restrictions.

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(a) This clause may be expressed more simply,—“If there shall be only one such child, or the representatives foresaid of one such child, the sum of £                      ; “if two such children, or their said representatives respectively, the sum of £                      each ; and if three or more such children, or their said representatives respectively, the sum of £                      each.” This form may be adopted when no difference is intended between the provisions to sons and daughters.

be, and as the amount of the said rent or value, &c., as at [m], in *Example 5*, supra).

If it be wished to settle separate and definite provisions upon existing children, the above form may be adapted to such a case by expressing, in the obligatory clause, the provisions intended for each child, and by omitting the first, and by making a few obvious alterations on the second part of the clause, which contains the eventual restrictions.

**9. Bond of Provision under 5 Geo. IV. c. 87, and subsequent Statutes, giving Provisions in addition to those formerly granted.**

This may be necessary, either when provisions have been already settled on his younger children by an entailed proprietor, in virtue of the statute, but within the extent permitted by it, in consequence of former provisions being unpaid at the time; or when they have been so settled in virtue of an entail containing inadequate powers. In such circumstances, it will in general be advisable to cancel the former bonds, and grant new bonds for the full sums intended to be settled on the younger children. When this is not deemed proper, the style, in the former of the above cases, may be as follows:—

Narrative.

I, A OF X, in the County of \_\_\_\_\_, CONSIDERING that I am heir of entail infest and in possession of the said estate of X, and that, in order as far as it was in my power to make provision after my death for my children, R, S, T, and U, and such other child or children as might thereafter be lawfully born to me, I did, upon the \_\_\_\_\_ day of \_\_\_\_\_, in exercise of the powers conferred on heirs of entail by "The Entail Provisions Act, 1824," "The Entail Amendment (Scotland) Act, 1875," "The Entail Amendment (Scotland) Act, 1878," and "The Entail (Scotland) Act, 1882," grant a bond of provision in favour of such of my said children, born and to be born, not succeeding to the said estate, as should be alive at the time of my death, or be thereafter born, and of the representatives of such of them as should predecease me as therein mentioned, in which bond I bound myself and the heirs of entail succeeding to the said estate of X, and *subsidiarie* my heirs, executors, and successors whomsoever, to pay to them, &c. (*mention the provisions*); but with and under the eventual

restrictions and conditions contained in the said bond: AND NOW <sup>Subsumption.</sup> SEEING that I have, since the date of the said bond, paid and extinguished the whole provisions granted by the deceased W of X, in favour of his children not succeeding to the said entailed estate, which were the only subsisting and unextinguished provisions granted by former heirs of entail of the said estate in favour of their children, burdeuing the succeeding heirs of entail, and the rents and proceeds of the said estate, in virtue of the said statutes or otherwise (*or, as the case may be*): AND THAT I am desirous of exercising the powers conferred by the said statutes, so far as now open and unexercised, in order to settle further provisions upon my said children, in addition to those granted to them by the foresaid bond of provision: THEREFORE I DO hereby BIND myself, and the heirs of entail succeeding to <sup>Obligation.</sup> the foresaid estate of X, and *subsidiarie* my heirs, executors, and successors whomsoever, in addition to the provisions settled upon my said children by the bond of provision before recited, to PAY, &c. (*and so forth, as at [x], p. 627, or as in the preceding Example*).

It is unnecessary to repeat here the subsequent clauses, as the necessary alterations will suggest themselves at once to the conveyancer. The clauses of restriction must be framed so as to apply to the additional sums provided, together with those previously settled upon the children, born and to be born, by the first bond of provision.

It is unnecessary to exemplify the bond of provision granted under the statute, in addition to a bond previously granted in virtue of a deed of entail, as such a deed may be easily framed from the preceding forms. It will commence with a narrative of the provisions granted under the entail, and then mention their inadequacy, and the powers of granting additional provisions conferred by the statute, and will proceed with the granting of the additional provisions, according to the above forms.

#### 10. Deed of Division or Apportionment of a Provision under Powers reserved or conferred in a Marriage-Contract or other Deed. (*See also Example 2, p. 623.*)

I, A, CONSIDERING that, by marriage-contract entered into <sup>Narrative.</sup> between me and the deceased B, my wife, dated the day of \_\_\_\_\_, 19\_\_\_\_, I, *inter alia*, bound myself, and my heirs, executors, and successors, on or before the \_\_\_\_\_ day

of                      then next                      , to lay out and secure the sum of £3000 sterling upon good and sufficient security, either heritable or moveable, bearing interest, and to take the rights and securities thereof to myself and the said B, and the survivor, in conjunct fee and liferent for her the said B's liferent use only, and to the child or children of our marriage, and the issue of the bodies of such child or children, as representing their parent in manner therein mentioned, in fee; whom failing, to my own nearest heirs and assignees whomsoever in fee; AND that I accordingly invested the said sum of £3000 in heritable security, in manner above provided, conform to bond and disposition in security, dated the                      day of                      , 19                      , and recorded in the Division of the General Register of Sasines applicable to the county of                      (or, as the case may be), the                      day of                      , 19                      , granted by D in favour of me, the said A (*here narrate the security*): AND FURTHER (*here narrate provision of conquest, or any other provision to be apportioned*): AND CONSIDERING that by said marriage-contract it was further declared that the said sum of £3000 [*if required, add, and £5000, and the share of the conquest*] destined to the children of the said intended marriage should be divisible among the children thereof, in such shares or portions as should be appointed by a writing under the hands of me and the said deceased B during our joint lives, and failing of any such joint division, by any writing under the hand of the survivor of us; and that the issue of any child deceasing before (*here state the period or event mentioned in the marriage-contract*) should take the share which would have fallen to their parents; and failing such issue, that the share should accrue to the surviving children, equally among them: AND NOW SEEING that said power was not exercised by me and my said wife jointly; AND that I am the survivor of the said spouses, and that it is expedient that I should exercise the said power: THEREFORE I do hereby DIRECT and APPOINT the said sum of £3000 to be divided into ten equal shares, and to be apportioned among the six children of said marriage in the following shares, viz.—three shares thereof to M, my eldest son; two shares to N, my second son; one share to O, my third and youngest son; two shares to P, my eldest daughter; one share to Q, my second daughter; and one share to R, my third and youngest daughter, subject to my own liferent and to all the

Exercise of  
the power.

Apportion-  
ment of the  
shares.

declarations and conditions contained in said marriage-contract (*then divide the other provisions and the conquest as may be desired*): AND I CONSENT to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

The foregoing form can be easily adapted to the case of divisions of a provision under a trust-deed or other settlement. (a)

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## SECTION V

### NOMINATION OF TUTORS AND CURATORS TO PUPILS AND MINORS

In those instances in which a person finds it to be unnecessary to execute a general settlement of his affairs, as when his only property consists of an entailed estate, it may sometimes be prudent to execute a nomination of tutors and curators to his children in a separate deed. This gives rise to another species of partial settlement; and we shall here give an instance of it.

I, A, JUDGING it to be proper and expedient to appoint tutors and curators to such of my children as shall be in pupillarity or minority at the time of my decease, DO THEREFORE hereby NOMINATE and APPOINT C, my spouse, and D and E, or the acceptors or acceptor and survivors and survivor of them, to be tutors and curators to R, S, and T, my children, and to any other child or children who may yet be born of my present or any future marriage; DECLARING that the majority of the above-named persons accepting and surviving shall be a quorum while there are more than two surviving, and in case they shall be reduced to two or one, the whole office shall be vested in such surviving persons or person, the said C, my spouse, while unmarried and in life, being always one and *sine quâ non*; WITH POWER to the said tutors and curators to appoint factors for managing the means and estate belonging to my said children, with suitable salaries, for whom they shall not be further liable than that they are reputed responsible at the

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(a) In framing Deeds of Apportionment, it will be kept in mind that, in virtue of the Act 37 & 38 Vict. c. 37, it is no longer obligatory to give each child a share of the apportioned fund.—Absolute exclusion of one or more of the objects of the power does not now void the appointment.

time of appointment; AND generally with power to do every act and deed in the management of the affairs of my said children competent to tutors and curators by the law of Scotland; WITH this PROVISION and DECLARATION ALWAYS, that the said tutors and curators shall be accountable for their actual intromissions only, and not jointly for one another, and that they shall not be liable for omissions, nor be bound to do diligence further than they shall judge necessary: AND I RESERVE full power to alter or revoke these presents at pleasure; AND I DISPENSE with the delivery hereof; AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.(a)

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## SECTION VI

### DEEDS OF MORTIFICATION

#### 1. Deed of Mortification for maintaining Bursars at an University, and for founding an Hospital for Poor Children.(b)

Mortification for maintaining bursars.

I, A, CONSIDERING that for the purpose of establishing four bursaries in the University of M, I have placed in the hands of the University Court of the said University the sum of £4000 sterling, for maintaining and educating four students in that University; AND SEEING it is necessary I should appoint in what manner the said sum is to be invested and employed: THEREFORE I DO hereby mortify the said sum for the purposes after specified and APPOINT the said University Court to LAY OUT and INVEST the said sum of £4000 [x] in the purchase of land situate in the neighbourhood of the town of M so soon as a convenient purchase may be made (or on some good heritable security or other legal trust investment, so soon

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(a) In preparing a Nomination of Tutors, the effect of the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27) will, of course, be kept in view.

(b) A clause of mortification may be competently included in a testament or trust-deed as a legacy; and if so, it may be inserted among the legacies in any of the forms, *supra*, introducing the clause as follows:—"AND FURTHER, for the purpose of establishing four bursaries in the University of M, I do hereby leave and bequeath to the University Court of the said University the sum of £4000, "for maintaining and educating four students in that University; WHICH SUM I "ORDAIN to be invested and employed in manner following—viz." (*take in from [x] to [y] in this Example*).

as the same can be procured), and till then to deposit the same in the Bank of Scotland for the purposes hereof: AND I do further APPOINT C during his life, and after his death the Senatus Academicus of the said University to be the constant patron or patrons of the said four bursaries; AND that he or they shall, so soon after my decease as conveniently may be, and thereafter from time to time, as often as a vacancy or vacancies may happen, NOMINATE and PRESENT to the said bursaries four students in the Faculty of in said University qualified in manner after-mentioned; which students so nominated and presented shall be entitled to the free yearly income of the said sum, or of the lands purchased by the same (*or to the yearly income of the investment thereof*), equally among them (under deduction of the expenses after-mentioned), and that for the space of four years to each bursar, if he shall continue so long to prosecute his studies at the said University; and if not, then for the whole space each bursar shall so continue at the same: AND in nominating and presenting students as aforesaid, I APPOINT the said patron or patrons to prefer, in the first place, such as are of my own kindred; secondly, such as are of the name of A; and, thirdly, such as are born in the parish of Z, the place of my birth; and, failing students of my own kindred, and of the name of A, and from the said parish, then such as shall be found best qualified and most deserving of the same; AND when and so soon as the right of presentation to the said bursaries shall become vested in the Senatus Academicus of the said University, and failing students to be preferred as aforesaid, THEN the said Senatus Academicus shall NOMINATE and PRESENT such students only to the said bursaries as they shall find on public examination to be best qualified and most deserving of such nomination; AND I AUTHORISE and EMPOWER the said University Court to pay out of the income of the said fund the necessary expenses attending the execution and management of this mortification [y]: AND WHEREAS it is my will and desire that the sum of £20,000 [*or, if so desired and the clause is inserted in a general trust-deed, say, free residue of my said estate above conveyed*] shall be applied to and for the purpose of founding and endowing an hospital or charitable institution in or near the town of Z, for maintaining, clothing, and educating poor children, to be called by the name of A's Hospital, THEREFORE I LEAVE and BEQUEATH the sum of £20,000 [*or ORDAIN and APPOINT my said*

Direction  
as to  
investment.

Nomination  
of patrons.

Order of  
selection of  
bursars.

Mortifica-  
tion for  
founding an  
hospital for  
poor  
children.

Nomination  
of patrons.

trustees, as soon as convenient after my death, to PAY, ASSIGN, and DISPONE the said residue] to and in favour of the Chief Magistrate of the burgh of Z, the Minister of the parish of Z, and the Sheriff-Substitute of the county of Z, all for the time being, and their successors in office, and to B, C, D, and E, during their lives, as trustees, in trust, to the end that they may apply the same, in the manner after-mentioned, for erecting, maintaining, and supporting an hospital for the purpose foresaid: AND I do hereby DECLARE that the Chief Magistrate of the said burgh, the Minister of the said parish, and the Sheriff-Substitute of the said county, all for the time being, shall be perpetual governors, and the said B, C, D, and E, trustees foresaid, shall, during their several lives, be joint governors along with them of the said hospital or charity, with full power to do all and whatever acts, deeds, matters, or things may be necessary for carrying my said will and desire into complete execution and effect; AND I APPOINT and AUTHORISE the said governors forthwith to lend out or invest on sufficient heritable security or other legal trust investment the said sum of £20,000 [*or* the said residue, in so far as not already so invested or consisting of lands and heritages in Scotland], and so soon as convenient, out of the said sum of £20,000 so bequeathed to them [*or* out of the estate, funds, and effects to be paid and transferred to them as aforesaid], to pay and apply any sum or sums, not exceeding £6000 sterling, to and for the following purposes, viz.—(*First*) For purchasing a piece of ground of not less than half an acre in extent, situate in or near the said town of Z; (*Secondly*) For building, erecting, and finishing on the said piece of ground, according to a plan to be approved of by them, a building, house, or hospital, containing sufficient accommodation for the children and other persons who may by these presents be entitled to reside in or to have the use of the same, and for fitting up and furnishing the said building in a sufficient and comfortable manner, suitable to the purpose for which it is destined; and (*Thirdly*) For purchasing and procuring a space in the church of Z, and for erecting thereon, if necessary, seats, pews, or desks, for the accommodation of the children and other persons connected with the said hospital during their attendance on Divine worship: AND I ORDAIN the said governors to apply the rents, interest, dividends, and annual profits of the said sum of £20,000 [*or* of the said residue], after payment of the said sum of £6000 sterling, in payment of the

Direction  
as to  
investment.

Purposes.

annual expenditure of and concerning the said hospital or charitable institution: WITH power to the said governors to uplift and vary said investments [and to sell said land and heritage when necessary], they being always bound to reinvest the same [and the prices of such lands and heritages] on good and sufficient heritable security or other legal trust investments as aforesaid: AND I do also DIRECT and APPOINT the said governors, when and so often as they shall find it necessary, to SELECT, NOMINATE, and APPOINT proper persons to be treasurer, surgeon, master, mistress, teachers, servants, and others to the said hospital or charitable institution; and which persons so appointed shall perform such duties, and be entitled to such suitable and reasonable advantages, salaries, wages, or emoluments, and superannuation allowances as the governors shall from time to time think fit to appoint: AND I do further APPOINT the said governors, from time to time, to choose and admit into the said hospital such number of poor boys and girls as the revenues of the said charity may at the time afford; such children to be clothed and maintained in the said hospital, and taught and instructed in the most useful branches of education suitable to their station, sex, and age; DECLARING that no children shall be admitted to the benefit of the said charity before they shall have attained the age of seven, nor after they shall have attained the age of ten years; nor shall they continue therein after they have attained the age of fourteen years complete: AND I RECOMMEND and APPOINT the preferences of admission to the said hospital to be as follows:—(*First*) Poor children of the name of A; (*Secondly*) Poor children of the name of B; (*Thirdly*) Poor children who, for three years previous to their admission, have been constantly resident in the parish of Z; (*Fourthly*) Poor children resident in the said parish of Z, though for a less period than three years; (*Fifthly*) Poor children from any part of the county of Z; (*Sixthly*) Failing applications from all these places, poor children coming from any part of Scotland; and (*Lastly*) I AUTHORISE and EMPOWER the governors for the time being to make bye-laws, rules, and statutes for the said hospital, and from time to time to alter the same as to them may seem necessary, they always keeping in view the original intention of the said hospital or charitable institution: AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

Power to  
appoint  
officials.

Preference  
in admis-  
sion to  
hospital.

## 2. Deed of Trust for founding and maintaining a Lectureship.

Conveyance  
to trustees.

I, A B, Esquire, residing in NICE, being desirous to settle, in manner underwritten, the sum of Seven thousand five hundred pounds, for the purpose of promoting the permanent establishment, in ANDERSON'S UNIVERSITY, of POPULAR LECTURES on certain subjects hereinafter specified, DO THEREFORE HEREBY GIVE, GRANT, and ASSIGN the said sum of Seven thousand five hundred pounds to [*names and designations of trustees*], and the survivors or survivor of them continuing to act, and to the managers for the time being of Anderson's University, and their successors in office, as trustees for the ends, uses, and purposes after expressed ; BUT DECLARING always that until the trustees above named and designed are, by death, resignation, or other disqualification, reduced to three, these trustees shall act exclusively as trustees under these presents ; and the appointment as trustees of the said managers for the time being of Anderson's University, and their successors in office shall, until that event, be and remain in abeyance : AND FURTHER DECLARING that until the trustees above named and designed are reduced as aforesaid to three, a majority of their number shall be a quorum ; but thereafter, when the said managers are associated with them, as well as after the death of the said trustees above named and designed, any five shall be a quorum. But the said sum of Seven thousand five hundred pounds is given, and shall be accepted in TRUST always, and only for the ends and purposes after expressed :

Purposes  
of trust.

THAT IS TO SAY—IN THE FIRST PLACE—For payment out of each year's income thereof of the expenses of every kind, whether chargeable to capital or income, that may be incurred by the trustees during that year, it being hereby expressly provided and declared that on no account shall the capital of the said sum of Seven thousand five hundred pounds be encroached upon for any purpose whatever : IN THE SECOND PLACE—If and when the said trustees shall see fit, they shall be entitled, and they are hereby authorised, out of each or any year's income, to set apart, and apply or accumulate, such portion thereof as in their discretion they may consider expedient, for the purpose of purchasing apparatus, in order the better to illustrate all or any of the courses of lectures hereinafter specified, or for the purpose of otherwise promoting the utility and success of all or

any of the said courses: AND IN THE THIRD PLACE—The said trustees shall each year distribute, in such proportions as they shall see fit, the remainder of each year's income of the said capital sum among such of the professors of Anderson's University as shall be appointed by the said trustees to deliver *annually or periodically*, in that University, separate courses of popular lectures on the three following subjects, or any of them, viz.—(*First*), Chemistry; (*Secondly*), Mechanical and Experimental Physics; and (*Thirdly*), Anatomy and Physiology: BUT PROVIDING ALWAYS AND DECLAR-  
Directions to trustees.  
 ING, as it is EXPRESSLY PROVIDED AND DECLARED, that none of the professors of Anderson's University shall have any vested interest in the said income or any part thereof; and that the said trustees, if and when they see cause, shall be entitled, and are hereby authorised, instead of appointing such professors to deliver the said lectures, to appoint for any year, or for any course, any other lecturer or lecturers, and to pay such other lecturer or lecturers such portion of the said income as to the said trustees shall seem meet; and for the better enabling the said trustees to carry the purposes of this trust into effect, I do hereby EMPOWER them to invest the said capital sum, or any part thereof upon any legal trust investment, and to realise the investments, and re-invest from time to time; but I EXPRESSLY DIRECT AND APPOINT the said trustees to take every investment in their own names as trustees for the ends, uses, and purposes foresaid, and on no account, either temporarily or permanently, to allow the same to be immixed with the funds of Anderson's University, or lent to the managers thereof; and I further EMPOWER the said trustees, hereinbefore named and designed, notwithstanding anything hereinbefore contained, even although their number is not reduced to three, to assume as trustees along with them the managers for the time being of Anderson's University, and their successors in office; but such  
Power of assumption.  
 assumption shall be competent only in the event of the trustees hereinbefore named and designed being unanimously of opinion that such assumption will be for the interest of the trust; and, in case of such assumption, five shall be a quorum: AND I EXPRESSLY PROVIDE AND DECLARE that it shall not be competent to assume into this trust any parties as trustees except the managers for the time being of Anderson's University, or their successors in office, it being my intention that on the death, resignation, or other disquali-

Election of  
officials of  
trust.

fication of the trustees hereinbefore named and designed, the management of this trust shall devolve upon the said managers and their successors in office; AND I FURTHER EMPOWER the said trustees to appoint any one of their own number, or any other person, to be secretary and cashier to this trust, with such moderate annual allowance for his trouble as the said trustees shall consider proper; and it shall be the duty of the said secretary and cashier to keep a correct minute-book of the proceedings of the trustees, and a cash-book containing all his intromissions with the trust-funds, which cash-book shall be examined, and, if correct, docketed once a year or oftener by the said trustees or by an auditor appointed by them; but the said office of secretary and cashier shall be held only during the pleasure of the trustees, and they shall be entitled to suspend and dismiss him without reason assigned, at pleasure, and to appoint another in his stead; AND I FURTHER EMPOWER the said trustees, annually or periodically, to appoint the lecturers who are to deliver the foresaid courses, and to fix upon the description and number of lectures to be so delivered, and the time and place of delivery, and the fees, if any, to be paid by students for attendance, and generally the whole arrangements of the courses; AND I FURTHER DIRECT that, upon the requisition of the convener for the time being, or of any two of the trustees, the trustees shall hold meetings from time to time, as occasion may require; but, at all events, they are hereby required to meet once a year on the twenty-second day of June, if not a Sunday, or if a Sunday, upon the Monday following that day, for the purpose of making arrangements for the next ensuing course of lectures, at which meeting they shall also appoint a convener for the ensuing year, and such convener, if present, shall be chairman of the meetings of the trustees, but if absent, the meeting shall elect their chairman; AND I FURTHER DIRECT that at all meetings of the trustees where a quorum is present a majority of those present shall rule the minority; and in case of equality, the chairman shall have both a deliberative and a casting vote: AND I FURTHER EMPOWER the said trustees at any meeting to appoint and elect committees of their number, either permanent or temporary, for all or any of the objects of the trust; AND I DECLARE that the trustees hereinbefore named shall be entitled, if and when they see fit, to resign the office of trustees, notwithstanding of having accepted thereof; AND I FURTHER DECLARE that none of the trustees shall be responsible

for loss or depreciation of investments, or for the solvency of the parties to whom they may lend any part of the trust-funds on heritable security, or for the solvency or fidelity of any secretary and cashier they may appoint, nor for the intromissions of each other, but each only for his actual intromissions: AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

### 3. Deed of Mortification *founding a Scholarship in a Scottish University.*

I, A, CONSIDERING that I have already granted an endowment Inductive clause. for two scholarships in the University of \_\_\_\_\_, in the departments of Mathematics and Mental Philosophy (*or, as the case may be*), and that for the encouragement and promotion of studies in the departments of physical and natural science in the said University of \_\_\_\_\_, and especially with the view of inducing Bachelors in Science in said University to proceed to the degree of Doctor in Science, I have resolved to give the sum of £ \_\_\_\_\_ sterling to said University for the foundation and endowment of two scholarships therein, in the departments of physical and natural science, and to place such scholarships in the gift and appointment of the Senatus Academicus of the said University in manner underwritten; THAT IS TO SAY, in pursuance of my desire to promote the well-being of the said University, and specially for the encouragement and promotion of studies in the departments of the natural and physical experimental sciences, and with the view above mentioned, I DO hereby GIVE, GRANT, and MORTIFY the foresaid sum of £ \_\_\_\_\_ Purpose of gift. sterling to and in favour of the University Court of the said University of \_\_\_\_\_, for the foundation and endowment of two scholarships, to bear the name of “\_\_\_\_\_” scholarships in the said University; AND I have, of date the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, assigned to the said University Court for the purposes foresaid, a bond and disposition in security for that sum held by me: AND I hereby DIRECT and APPOINT that the said scholarships shall be in the gift and appointment of the Senatus Academicus of the said University as patrons thereof, and be given to the most eminent of the Bachelors of Science in said University who have passed their examinations either in the year preceding the vacancy or in the year in which such vacancy occurs; but the Senatus shall have the power Appointment of patrons.

Conditions  
of election  
to the  
scholarship.

of deciding whether any of the Bachelors of Science of these years have passed with such honours as will justify the Senatus in conferring the scholarships upon them : AND the said scholarships shall be held and enjoyed by each successful competitor, subject to the declaration after-mentioned, for a period not exceeding two years ; DECLARING, however, that each of the said scholarships shall be held for the second year only in the event of the holder having obtained the degree of Doctor in Science in said University : AND the said scholarships shall be of value and amount equal respectively to one-half of the free annual proceeds of the said sum of £                      sterling, —that is, the proceeds after deduction of any necessary expenses,—and shall be awarded after the University examination for the degree of Bachelor of Science, and only upon a candidate having obtained that degree, the one scholarship being for proficiency in the department of physical science, including experimental philosophy and chemistry, and the other for proficiency in the department of the natural sciences, including botany, zoology, physiology, and geology,—the award being made in each department to the Bachelor who, on his examination, displays the greatest proficiency in such department, and who has passed with such honours as to entitle him, in the judgment of the Senatus Academicus, to the scholarship as a reward of merit, and shall be paid to the holder of each respectively half-yearly at Whitsunday and Martinmas, in equal portions, beginning the first payment at the first of said terms which shall occur after the period of such holder's graduation in science : AND it is hereby PROVIDED and DECLARED that the first award of the said two scholarships shall take place in the year 19                      , at the period of graduation in science in the said year ; but it is hereby provided that it shall not be competent for any person to hold either of the said scholarships along with any other scholarship, fellowship, or bursary of any Scottish University, or with any situation or appointment of any kind yielding to him an annual income of more than £100 sterling ; and the right of any party appointed to either of said scholarships shall terminate on his obtaining any such appointment, when it shall be open to the said Senatus Academicus to make a new election, or to confer the scholarship on any party having taken his degree of Bachelor of Science in the year when the vacancy occurs, or in the previous year, who shall have passed with such honours as to justify the Senatus in conferring the scholarship

upon him: AND it shall be in the power of the Senatus, if on any occasion it shall seem to them that in either department any two Bachelors are of equal merit, to divide the scholarship between them, or if in either department two Bachelors shall have passed with honours sufficient to justify the Senatus in conferring the scholarship upon them, whilst in the other department no Bachelors have passed with such honours, to award the two scholarships to two Bachelors who have passed with the necessary honours in one department on that occasion; but the award shall always be to the separate departments when in each there is a Bachelor to whom the Senatus may be justified in awarding the scholarship: AND on each occasion of a vacancy, after the scholarship has been held for the full period of two years, the vacant scholarship or scholarships shall be awarded under the same conditions as are hereinbefore provided as to the first award thereof: AND IT IS FURTHER PROVIDED and DECLARED that in case of any gross misconduct on the part of the scholar, it shall be lawful for the said Senatus Academicus to suspend him from, or to deprive him of, the scholarship held by him, subject to an appeal to the University Court, if taken within eight days, and which appeal must be heard and disposed of by the University Court with all possible dispatch, but in the meantime the decision of the Senatus Academicus shall receive effect from its date: AND it is hereby FURTHER PROVIDED and DECLARED that in any year in which either of the said scholarships may be vacant, the sum which would have been paid to the scholar had it been filled shall be added to the capital of the mortification; but the Senatus Academicus shall be entitled, within the next two years, if there shall be a Bachelor in either department who has failed to get an award of the scholarship from superior merit in another Bachelor, but who has yet passed with such honours as will justify the Senatus in conferring a scholarship upon him, to award to him the sum which has been unapplied in either of the two previous years from want of merit in the Bachelors of either of these years, and to withdraw from the capital the sum added to it in either of said years as aforesaid; but no sum shall be so applied which has been added to the capital in any previous year: AND the Senatus Academicus of the said University shall have power, whenever they shall see fit, to make any rules and regulations for the administration of said scholarships not inconsistent with the foregoing conditions, and specially to impose upon

the holders of said scholarships such conditions as to prosecution of study or of scientific research as may seem desirable, and to call up said sum of £                      sterling from the security upon which the same is invested, and upon receiving payment thereof, to lay out and invest of new said mortified sum on any legal trust investment: AND the said *Senatus Academicus* shall be noways liable for the sufficiency or insufficiency of the investments on which the said sum is invested: AND I CONSENT to registration hereof for preservation.—  
IN WITNESS WHEREOF, &c.

We recommend that any person desirous of promoting the welfare of a Scottish University, by founding scholarships or bursaries, or endowing professorships, should, before executing the deed of mortification or foundation, communicate with the *Senatus* of the University, or their agent, as to the conditions and terms of the grant, as there are many matters to be provided for which might not occur to one not conversant with the practical working of such mortifications.

## SECTION VII

### RESIGNATION AND ASSUMPTION OF TRUSTEES

The Act 24 & 25 Vict. c. 84 (1861) enacts that all trusts constituted by virtue of any deed or local Act of Parliament, under which gratuitous trustees are nominated, shall be held to include, unless the contrary be expressed, power to any trustee so nominated to resign the office of trustee, and also power to the trustee so nominated, if there be only one, or to the trustees so nominated, or a quorum of them, to assume new trustees. (a)

The provisions as to the resignation of trustees will be found in sec. 10, and as to the assumption of new trustees in sec. 11 of the 1867 Act (30 & 31 Vict. c. 97).

Where a trustee about to resign is sole trustee, or where, though not the only trustee, trust property stands vested in his own name to the exclusion of the other trustees, he must, in connection with his resignation, denude of all trust property. The trustee may denude in the deed by which he resigns office, or in an antecedent or subsequent conveyance, or in the deed of assumption of a new trustee where there is such.

Though a trustee may, after he has resigned, denude of trust property, he cannot, after resignation, assume new trustees.

It is provided by sec. 9 of the Trusts Act of 1867 that "When a trustee "who resigns, or the representatives of a trustee who has died or resigned, "cannot obtain a discharge of his acts and intromissions from the remaining "trustees, and when the beneficiaries of the trust refuse, or are unable, from "absence, incapacity, or otherwise, to grant a discharge, the Court may, "on petition to that effect at the instance of such trustee or representa-

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(a) As to resignation of non-gratuitous trustees, see the cases of *Orphoot*, 24 R. 871; *Alison*, 23 S.L.R. 362; *Assets Co.*, 4 S.L.T. 120; *Scott*, 22 R. 78; and *M'Lean*, 22 R. 872.

“tive, and after such intimation and inquiry as may be thought necessary, grant such discharge; and it shall be in the power of the Court to direct that the expense of such application be paid out of the trust-estate, if the Court shall consider this reasonable.”

The forms appended to the Trusts Act of 1867, and quoted below appear sufficient for all practical purposes.

**1. Minute of Resignation** (*being Schedule (A) to the Trusts Act of 1867*).

I, A B, DO hereby resign, as and from the date hereof, the office of trustee under the trust-disposition and settlement (*or other deed*) granted by C D in favour of E F, G H, and myself, dated the \_\_\_\_\_ day of \_\_\_\_\_, and recorded in the Books of Council and Session (*or other register*) the \_\_\_\_\_ day of \_\_\_\_\_. (*If the trustee was assumed, add—And to which office of trustee I was assumed by deed of assumption granted by the said E F and G H, dated the \_\_\_\_\_ day of \_\_\_\_\_.*)—IN WITNESS WHEREOF, &c.

When, in the circumstances already adverted to, the retiring trustee has to denude of trust property, a conveyance suitable to the nature of the property may be added to the above form as follows :—

And further, I do HEREBY DISPONE (*or ASSIGN*) to and in favour of (*name and designation of the continuing or new trustee or judicial factor, as the case may be*), and his successors in office and assignees, all and whole, &c.

If the trustee resigning is the sole trustee, the provisions in sec. 10 of the Trusts (Scotland) Act, 1867, as to the consents to be obtained before resigning, should be kept in view.

**2. Deed of Assumption and Conveyance** (*being Schedule (B) to the Trusts Act of 1867*).

I, A B (*or, WE, A B and C D*), the accepting and surviving (*or remaining*) trustee (*or trustees, or a majority and quorum of the accepting and surviving trustees*), acting under a trust-disposition



A (*designation*) under his Trust-Disposition and Settlement and Codicil and relative Deed of Assumption after-mentioned, presented to me Notary Public subscribing, a Disposition granted by M (*designation*), in favour of the said A, dated , and with warrant of registration thereon on behalf of the said A, recorded in the Division of the General Register of Sasines applicable to the county of Y the day of Nineteen hundred and (*or otherwise, as the case may be*): By which recorded Disposition the said A was infeft in ALL AND WHOLE (*here describe the lands or other subjects as the case may be, as the same are described in the disposition or other deed or instrument, and refer to any real burdens or conditions as constituted or referred to in the disposition or other deed or instrument*): AS ALSO there was presented to me an Extract of a Trust-Disposition and Settlement granted by the said A, dated and Codicil annexed thereto dated , and with relative Minute of Acceptance by the said B and C endorsed thereon, and dated ; All recorded in the Books of Council and Session (*or otherwise, as the case may be*), the day of , Nineteen hundred and : By which Trust-Disposition and Settlement the said A gave and disposed to and in favour of the said B and C, and of G (*designation*), who predeceased the said A and such other person or persons as he might thereafter appoint or as might be assumed to act in the trust thereby constituted, and the survivors and survivor, acceptors and acceptor of them, as trustees and trustee for executing the trust thereby created, and to the heirs of the last surviving trustee, and to the assignees of the said trustees and their foresaids, ALL AND SUNDRY the whole means, estate, and effects, heritable and moveable, real and personal, then belonging or which should belong to him at the time of his death, with the whole vouchers and instructions thereof, but in trust only for the purposes and with the powers (including, *inter alia*, a power of sale of his heritable estate or any part thereof) therein after-written, and the said A thereby nominated his said trustees to be his executors: AND by which Codicil the said A, *inter alia*, revoked the nomination of the said G as trustee and executor under his said Trust-Disposition and Settlement: AND by which Minute of Acceptance the said B and C accepted of the offices of trustee and executor conferred upon each of them by the said Trust-Disposition

and Settlement: As ALSO there was presented to me an Extract of a Deed of Assumption granted by the said B and C, dated and with Minute of Acceptance thereon dated recorded in the Books of Council and Session (*or otherwise, as the case may be*) the day of Nineteen hundred and : By which Deed of Assumption the said B and C as the accepting and surviving trustees under said Trust-Disposition and Settlement and Codicil assumed the said D as a trustee under the said Trust-Disposition and Settlement and Codicil, and disposed and conveyed to themselves and the said D as trustees foresaid, and to the survivors and survivor, and acceptors or acceptor of them, and to the heirs of the last surviving trustee, ALL AND SUNDRY the whole trust-estate and effects, heritable and moveable, real and personal, of every description, or wherever situated, then belonging to or under the control of the said B and C as trustees foresaid, with the whole vouchers, titles, and instructions thereof; AND by which last-mentioned Minute of Acceptance the said D accepted of the office of trustee thereby conferred upon him: WHEREUPON this Instrument is taken in the hands of L M (*insert name and designation of Notary Public*) in the terms of the "Titles to Land Consolidation" (Scotland) Act, 1868."—IN WITNESS WHEREOF, &c.

It may happen that part of the subjects contained in the truster's infestment, has been sold by him before his death; and it will be advisable in all cases in order to avoid possible questions with the purchaser or parties in his right, and the awkwardness in any event of completing a title in the persons of the trustees to property which really does not belong to them, to inquire if any such sale has taken place. If there has been a sale, and the purchaser's title can be produced to the Notary, an addition to the instrument may be made in the following or similar terms, immediately after the narrative of the Deed of Assumption:—

Whereby the said B, C, and D are now in right of the subjects described in the foregoing Dispositions dated and recorded as aforesaid, but excepting therefrom the portions thereof which were sold and disposed by the said A, conform to Disposition granted by him in favour of P dated (and if recorded), recorded in the Division of the General Register of Sasines applicable to the county of the day of , Nineteen hundred and , viz., ALL AND WHOLE (*here describe or validly refer to the excepted subjects*): Which Disposition was also presented to me: WHEREUPON, &c. (*as before*).

## SECTION IX

## DISCHARGES

## 1. Discharge of a Trust in favour of the Trustees.

I, A, CONSIDERING that the deceased B, my father, by trust-disposition and settlement, dated the            day of            19    , and recorded in the (*specify registration*), the            day of            19    , DIS-  
PONED, ASSIGNED, and CONVEYED to E, C, and D (*here take in the terms of the conveyance as in the dispositive clause of the trust-disposition, with such of the powers of the trustees and purposes of the trust as may be necessary to explain the discharge*), as the said trust-disposition more fully bears: IN VIRTUE OF WHICH trust-disposition and settle-  
ment the said trustees entered on the possession and management of the said trust-estate: AND NOW SEEING that as they have, in terms of the said trust-deed, denuded themselves of the said trust, and conveyed the subjects under their management to me, by disposition of this date, and have accounted to me for their intro-  
missions and management, it is reasonable that I should grant the discharge underwritten: THEREFORE I have exonerated and dis-  
charged, as I do hereby EXONER, ACQUIT, and *simpliciter* DISCHARGE the said E, C, and D, and their heirs and successors, and the factors appointed by them, of their whole actings, transactions, intro-  
missions, and management had by them, or any of them, in consequence of the said trust, or in relation thereto in any manner of way, and of the said trust-disposition itself, and whole clauses therein contained, with all that has followed or is competent to follow thereupon, and of all omissions which I can lay to their charge: AND I BIND and OBLIGE myself, and my heirs and executors, to free and relieve the said trustees and their foresaids of and from all claims and demands which may be made against the estate of the said deceased B, of whatever kind or denomination: WHICH DISCHARGE I BIND myself, my heirs, and successors, to WARRANT to the said E, C, and D, and to their heirs and successors, at all hands: AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

## 2. Discharge by a Person arrived at Majority to his Tutors and Curators.

I, A, CONSIDERING that B and C were nominated and appointed by the deceased D, my father, to be tutors and curators to me during my pupillarity and minority, in virtue of a nomination made and executed by him, dated the                      day of                      , 19    (or state in what other manner the tutors and curators were appointed): AND SEEING that I am now arrived at the age of twenty-one years, and that the said B and C have discharged the duties incumbent upon them as my tutors and curators, during my pupillarity and minority, in a faithful and proper manner, and have made just count, reckoning, and payment to me (a) of the whole intromissions had by them or their factors with the means and estate, heritable and moveable, belonging to me, and under their management, conform to fitted accounts betwixt me and the said B and C, settled and cleared of this date, and have delivered up to me the whole bonds, obligations, conveyances, grounds of debt and diligence, and other writs and evidents belonging to me, and in their custody, whereof I hereby grant the receipt: THEREFORE I do hereby EXONER and DISCHARGE the said B and C, my tutors and curators aforesaid, and their respective heirs, executors, and successors, of all intromissions whatever had by them, or either of them, or their factors in their names, with the means and estate, heritable and moveable, belonging to me, and falling under their management, and of all deeds of administration done by them in their said offices, and of all omissions which I can lay to their charge in the exercise thereof, and of the custody of all writs and evidents whatever pertaining to me, and of all claim, action, diligence, and execution (b)

(a) If the guardians are due the minor any debt, or have not accounted for any article of intromission, the discharge must be granted as above, only mentioning at (a) where that reference occurs, "with the exception hereinafter mentioned," and inserting an exception and declaration after the Clause of Warrandice as follows: "DECLARING, nevertheless, that these presents shall noways hurt or prejudice the following debts and sums of money intromitted with, but not yet accounted for by my said tutors and curators—viz. (here specify the articles not yet accounted for): Which debts and sums of money, still due by my said tutors and curators to me, are to continue in full force notwithstanding these presents."

(b) If the tutors or curators have become bound as cautioners for the minor, add the following Clause of Relief at the end of the Clause of Warrandice: "AND ALSO, I BIND and OBLIGE myself and my foresaids to FREE and RELIEVE my said tutors and curators and their foresaids, from payment of all sums of

competent at my instance against them thereanent in any manner of way, DISPENSING with the generality foresaid, and DECLARING that this discharge shall be equally effectual as if the several intrusions and omissions of the said B and C, as tutors and curators foresaid, deeds of administration done by them, and writs and others foresaid, were herein particularly specified: WHICH DISCHARGE I BIND myself and my foresaids to WARRANT to the said B and C, and their heirs, executors, and representatives whomsoever, as a sufficient exoneration of the premises, at all hands: AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

**3. Discharge by a Child of his Legitim and Share of his Father's Executry.**

I, A, LAWFUL son of the deceased B, GRANT me to have RECEIVED from C and D, my brothers, executors-dative (*or, as the case may be*) of the said deceased B, the sum of £500 sterling, as my share of the effects which belonged to my said deceased father at the time of his death, which I hereby accept in satisfaction of all I can ask or claim out of my said father's effects: THEREFORE I EXONER and DISCHARGE the said C and D, their heirs, executors, and successors, and all others the representatives of the said deceased B, or the intruders with his effects, of all sums of money or other effects which belonged or were due to me, or which I could have asked or claimed, out of the estate and effects of my said deceased father; AND PARTICULARLY of any bairns' part of gear, legitim, portion-natural, and share of executry which I can claim through the death of my said father, and of all action, diligence, and execution which have followed or are competent to me for the same; and of the confirmed testament of the said B, in so far as it relates to the premises, and of all that has followed or is competent to follow thereon: AND I OBLIGE myself, my heirs and successors, to WARRANT this discharge at all hands: AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF.

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"money, principal, interest, and penalties, and from prestation of all facts, for the payment or performance of which they stand engaged for me by bond, contract, or any other way whatsoever, at any time preceding the date hereof, if any of these bonds or other grounds of debt shall be found unretired or uncanceled, and from all cost, damage, and expenses or interest, that they, or any of them or their foresaids, shall happen to sustain and incur there-through in any manner."

# TITLE X

## MATRIMONIAL WRITS

### SECTION I

#### ANTENUPTIAL CONTRACTS OF MARRIAGE WHERE THERE IS NO TRUST CREATED (a)

##### 1. Antenuptial Contract of Marriage *in the usual form.*

###### 1. *Inductive Clause.*

IT IS CONTRACTED, AGREED, and MATRIMONIALY ENDED between the parties following—viz., A, *of the first part*, and B, eldest daughter of the deceased X, *of the second part*, in manner following, THAT IS TO SAY, the said parties have accepted, and hereby ACCEPT of each other for lawful spouses, and promise to solemnise their marriage with all convenient speed.

##### 2. *Obligation to secure a sum to the Wife and Children.*

IN CONTEMPLATION OF which marriage, and IN CONSIDERATION OF the conveyance and assignation after written, the said A BINDS and OBLIGES himself, his heirs, executors, and successors whomsoever, without the necessity of discussing them in their order, on or before the            day of            next, to lay out and secure the sum of £3000 sterling upon good and sufficient security, either heritable or moveable, bearing interest, and to take the rights and securities thereof to himself and the said B, [m] and the survivor, in conjunct

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(a) As to the effect of such contracts, see observations, pp. 695-6-7.

fee and liferent,(a) for her, the said B's liferent use only, and to the child or children of the said intended marriage, and the issue of the bodies of such child or children, as representing their parent in manner after-mentioned, whom failing, to the said A's own heirs and assignees whomsoever in fee: AND as often as the said sum, or any part of it, shall be uplifted, the said A BINDS and OBLIGES himself and his foresaids to re-invest and again secure the same in the terms above expressed.

### 3. *Provision of Acquirenda.*(b)

[AND FURTHER, the said A BINDS and OBLIGES himself and his foresaids, over and above the said sum of £3000, to provide [n] the half of the whole heritable and moveable property and funds that he shall acquire, or shall succeed to, or shall receive by way of donation, during the said intended marriage (after deduction of the debts due by him), to the foresaid B, his promised spouse, in liferent, for her liferent use only, in case she shall survive him, and the whole of the said *acquirenda* and others to himself, and the child or children of the said intended marriage, and the issue of the bodies of such child or children as aforesaid, in fee; and that the extent of the said *acquirenda* and others may be the more easily known and ascertained, it is hereby declared that the funds and effects at present belonging to him amount to the sum of £                      sterling (if the wife has funds, add here, and that the funds and effects at present belonging to the said B, and conveyed to the said A, amount to the sum of £                      sterling).](c)

(a) See Title II. for remarks on Clauses of Destination.

(b) It is thought that provisions of this kind unduly hamper the husband, and they are certainly apt to raise difficult questions.

(c) By the above provision the widow will have the liferent of only one-half of the *acquirenda*, so that, on the predecease of the husband, the whole fee will fall to the children, under burden of the liferent of one-half; but sometimes the liferent of the whole or a large portion of the *acquirenda* is given to the wife, and the fee thereof to the children, leaving, in the latter case, the remainder of the fee to be disposed of by the husband. In such a case the widow is taken bound, during the subsistence of the liferent, to aliment the children. The following clause may, in such a case, be substituted for that within brackets [ ] in the text:—"AND FURTHER, the said A BINDS and OBLIGES himself and his foresaids, over and above the said sum of £3000, to provide and secure to the said B, in case she shall survive him, the liferent for her liferent use only, and to the said child or children who may be procreated of the present intended marriage, and the issue of the bodies of such child or children as aforesaid, the fee of three-fourth parts of all and sundry lands, heritages and sums of money, goods, gear,

#### 4. *Provision of Furniture,(a) and Warrandice thereof.*

AND the said A FURTHER hereby GIVES and DISPONES to the said B, if she shall survive him, the whole household furniture and plenishing, including plate and plated articles, linen, china, books,<sup>(b)</sup> pictures, and wines, that shall belong to him at his death : DECLARING, nevertheless, that it shall be in the power of the child or children of the marriage, if any be, or their issue aforesaid, or the assignees of the said child or children or of their said issue, to redeem from the said B the said household furniture and plenishing, including as above-mentioned, by making payment to her, within three months after the said A's death, of the sum of £                      for the same ; but if the said child or children, or their said issue, or their assignees, shall fail in making payment of the said sum within the said three months, the power of redemption above expressed shall thereby

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"and other estate, heritable and moveable, real and personal, that he shall happen to acquire, or succeed to, or receive by way of donation during the subsistence of this present intended marriage : DECLARING, however, that the said B shall be bound and obliged to employ the funds which she shall acquire in virtue of this provision of *acquirenda*, after the said A's death, not only in supporting herself but also in alimending and educating the children of this present intended marriage until the said children shall attain majority or be married ; and upon the marriage or majority of each of such children, one-half of the share of *acquirenda* which shall belong to such child in virtue of this provision shall then be payable or prestable to him or her, and shall be enjoyed by him or her unburdened by the said B's liferent, which liferent shall in that case cease and determine to the extent of one-half of said share : AND FURTHER DECLARING that, in the event of there being no child or children of the intended marriage, or issue of the bodies of such child or children in existence at the dissolution of the said marriage, then the whole of said *acquirenda* shall belong to the survivor of the said A and B in liferent, and after the death of the said survivor, one-half of the fee thereof shall belong to the heirs and successors of the said A, and the other half thereof to the heirs and successors of the said B : AND for ascertaining the extent of the said *acquirenda*, it is hereby AGREED and DECLARED that the same shall comprehend and extend to the whole estate, heritable and moveable, real and personal, of whatever description, and wherever situated, belonging to the said A at the dissolution of the said present intended marriage, after deduction of the debts due by him, and of the sum of £3000 (or, if more than one sum has been previously mentioned, say, and of the sum of £5000, or, as the case may be) contracted to be laid out and secured by him in manner before written."]

(a) Sometimes the husband binds himself to pay a sum to the wife in lieu of furniture, in which case the following may be substituted for this article :— "AND FURTHER, the said A BINDS and OBLIGES himself and his forebears to MAKE PAYMENT to the said B, at the term of Whitsunday or Martinmas which shall happen next after his death, of the sum of £                      sterling, in lieu of household furniture ; with the interest of the said sum, at the rate of £5 per centum per annum, from the said term of payment thereof during the not-payment, and a fifth part more of said sum of liquidate penalty in case of failure."

(b) In the case of a professional man it may be desirable to except "professional books."

expire, without the necessity of any declarator or any form whatever on the part of the said B; WHICH furniture, and the conveyance thereof above written, the said A BINDS and OBLIGES himself and his foresaids to WARRANT to the said B to be free from all debts and claims whatever.

5. *Provision of Mournings and Interim Aliment.*

AND FURTHER, the said A BINDS and OBLIGES himself and his foresaids TO MAKE PAYMENT, within three months after the day of his death, to the said B, if she shall survive him, of the sum of £ (a), as an allowance for her mournings, with a fifth part more of penalty in case of failure, and the interest of said sum of £ , at the rate of £5 per centum per annum, from and after the said term of payment, during the not-payment thereof: AND FURTHER, TO MAKE PAYMENT to her, at the rate of £ per annum, for the time that shall have to run from the day of his death to the term of Whitsunday or Martinmas thereafter, whichever shall first arrive, in name of aliment and as the expense of maintaining the family, and for house-rent and servants' wages to that term, which aliment shall be paid to her at the same time, and under the like penalty, with the allowance above provided for mournings, and shall bear like interest during the not-payment thereof; which sums the said B hereby accepts in full of all she can ask in name of mournings or for alimenting and supporting herself and the family to the first term after her husband's death.

6. *Declaration as to Annuity from a Separate Fund.*

AND WHICH provisions hereby made in favour of the said B are hereby DECLARED to be over and above the annuity to which she

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(a) It has been held that, however greatly enhanced the means of the husband may be at the time of his death, the provision of a specific sum can on no account be altered. As to how far the present provisions are privileged debts in a competition with creditors, *see* Ersk. I. vi. 41, notes 172, 173, and 174.

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ALWAYS, that if any child or children of the said present intended marriage shall die before the sum provided to him, her, or them, under these presents or under the said power of division, shall become payable, leaving lawful issue of his, her, or their bodies, the said issue shall have right to the share or shares which their parent or respective parents would have received if he, she, or they had not died; AND it shall be lawful to and in the power of the said A, except in the event of his entering into a second marriage, and then only with consent, as aforesaid, whom failing of the said B in the terms above mentioned, to divide and apportion among the issue of the body of any child the share to which the parent of such issue, if surviving, would have been entitled: (a) and until the said provisions hereby made in favour of the children of the said intended marriage shall be paid or become payable, the said A BINDS and OBLIGES himself, and his heirs and successors, to aliment and educate them in a manner suitable to their stations.

9. *Declaration that Children's Provisions are in full of Legitim, &c.*

ALL WHICH provisions before written in favour of the child or children of the said intended marriage shall be in full satisfaction to them of legitim, executry, and everything else that they could claim or demand by and through the decease of the said A their father, and the said B their mother.

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(a) This power of division may be more succinctly expressed as follows:—  
 “DECLARING ALWAYS, as it is hereby specially PROVIDED and DECLARED, that the aforesaid sums of £3000 [and £5000], and the share of *acquirenda* destined to the children of the said intended marriage, shall be divisible among the children thereof in such shares or portions as shall be appointed by a writing under the hands of the said A and B during their joint lives; and failing any such joint division, by any writing under the hand of the survivor of them; and failing any such joint or single division, then the said provisions, including the said share of *acquirenda*, shall be equally divided among the said children; it being declared that the issue of any child deceasing before the terms of payment of the said provisions shall take the share, original and accreting, which would have fallen to their parents; and failing such issue, the share shall accrete to the surviving children equally among them.”

will be entitled if she survives the said A as his widow, from the widows' fund of the Society of S (*or, as the case may be*).

7. *Acceptance by the Wife of the Provisions as in full of her Legal Claims.*(a)

AND WHICH provisions above written, conceived in favour of the said B, SHE HEREBY ACCEPTS in full satisfaction of all terce of lands, legal share of moveables, and every other thing that she, *jure relictæ* or otherwise, could ask, claim, or demand from the said A or his heirs, executors, and representatives, by and through his death if she shall survive him.

8. *Power of Division of the Children's Provisions, and Obligation on the Husband to Aliment the Children.*

AND IT IS FURTHER DECLARED that if there shall be more than one child of the said intended marriage, it shall be lawful to and in the power of the said A, at any time of his life, should he not have entered into another marriage, to divide and apportion as he shall think proper among the said children the above written provisions in their favour, including the *acquirenda*; but in the event of his entering into a second marriage, he shall have no such power of division except with consent of the persons or person at whose instance it is hereinafter provided that execution shall pass hereon for implement hereof in favour of the said child or children, or their issue; and in case of his death without making such division, the said B, if she shall survive him, shall have the same power while she continues his widow; and failing any such division, the said provisions shall belong to and be divided among the said children equally, share and share alike: DECLARING

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(a) It will, of course, be kept in view that, without this acceptance, the terce would be excluded in virtue of a special statute (1681, c. 10), but the *jus relictæ* would not. The general terms of this clause do not exclude the widow's claim for mournings and aliment if there be no provision for these, unless the claims be expressly renounced, as in sec. 5 of this Form.

ALWAYS, that if any child or children of the said present intended marriage shall die before the sum provided to him, her, or them, under these presents or under the said power of division, shall become payable, leaving lawful issue of his, her, or their bodies, the said issue shall have right to the share or shares which their parent or respective parents would have received if he, she, or they had not died; AND it shall be lawful to and in the power of the said A, except in the event of his entering into a second marriage, and then only with consent, as aforesaid, whom failing of the said B in the terms above mentioned, to divide and apportion among the issue of the body of any child the share to which the parent of such issue, if surviving, would have been entitled: (a) and until the said provisions hereby made in favour of the children of the said intended marriage shall be paid or become payable, the said A BINDS and OBLIGES himself, and his heirs and successors, to aliment and educate them in a manner suitable to their stations.

9. *Declaration that Children's Provisions are in full of Legitim, &c.*

ALL WHICH provisions before written in favour of the child or children of the said intended marriage shall be in full satisfaction to them of legitim, executry, and everything else that they could claim or demand by and through the decease of the said A their father, and the said B their mother.

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(a) This power of division may be more succinctly expressed as follows:—  
 “DECLARING ALWAYS, as it is hereby specially PROVIDED and DECLARED, that the  
 “aforesaid sums of £3000 [and £5000], and the share of *acquirenda* destined to  
 “the children of the said intended marriage, shall be divisible among the children  
 “thereof in such shares or portions as shall be appointed by a writing under the  
 “hands of the said A and B during their joint lives; and failing any such joint  
 “division, by any writing under the hand of the survivor of them; and failing  
 “any such joint or single division, then the said provisions, including the said  
 “share of *acquirenda*, shall be equally divided among the said children; it being  
 “declared that the issue of any child deceasing before the terms of payment of the  
 “said provisions shall take the share, original and accreasing, which would have  
 “fallen to their parents; and failing such issue, the share shall accresce to the  
 “surviving children equally among them.”

10. *Prohibition against Wife restricting (a) her Provisions  
stante matrimonio.*

AND it is FURTHER hereby AGREED and DECLARED that it is a condition of this contract that it shall not be lawful to nor in the power of the said B, during the existence of the said intended marriage, to discharge, renounce, or restrict the said provisions herein contained in her favour, or any part of them, or to convey or assign the same onerously or gratuitously, in whole or in part, without the consent of L, M, and N after-mentioned, and the survivors or survivor of them, and failing all of them, the nearest heir-male of the survivor of them who shall have attained majority, and shall be resident within the United Kingdom: DECLARING that any discharge and renunciation, conveyance, or deed of restriction, or any other deed whatever in relation to the said provisions, granted by her without such consent, shall be null and void.

11. *Conveyance of the Wife's Property.*

FOR WHICH CAUSES, and on the other part, the said B (b) hereby ASSIGNS,[o] DISPONES, CONVEYS, and MAKES OVER to the said A, his heirs, and assignees, ALL AND SUNDRY the whole property, heritable and moveable, real and personal, now belonging or addebted to her, or that shall in any way belong and be addebted to her, during the subsistence of the said marriage; and particularly, without prejudice to the said generality, all and whole the sum of £                      , contained in a bond of provision for the sum of £                      , granted by the

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(a) This clause is intended to prevent the wife from being unduly influenced during the marriage to restrict or renounce her provisions; and it may be introduced either here or immediately before her acceptance of her provisions.

(b) If the banns of marriage have been proclaimed before the contract is executed, and if the wife be at the time actually possessed of property and funds, and if the destination be not actually in favour of the husband himself, this part of the deed should bear to be "with the special advice and consent of the said A." The lady, from the date of the proclamation, ceases to have any power to convey without the consent of her husband (Ersk. I. vi. 22).

deceased Y, her maternal grandfather, to the deceased Z, her mother, in liferent, and the said B and the other children of the said Z in fee, and which sum of £            is the share belonging to the said B of the sum contained in the said bond, together with the said bond itself, so far as relates to the said sum hereby assigned, with all that has followed or may be competent to follow thereon; SURROGATING and SUBSTITUTING the said A and his foresaids in her full right and place of the premises, with the same powers in every respect as she herself enjoyed before granting hereof; excepting always from this conveyance the foresaid provisions, which the said A has by this contract made in her favour, and any other provision which he may hereafter think proper to make in her favour, with all action and execution competent to her thereanent and also excepting the sums of money and others after-mentioned.[p]

12. *Appointment of Trustees to secure implements of provisions to Wife and Children.*

AND it is hereby AGREED, PROVIDED, and DECLARED that all manner of action and execution shall pass upon this contract for implement of the whole provisions thereof in favour of the said B and the children of the marriage, or their issue as aforesaid, at the instance of the persons after-named, as trustees—(a) viz, L, M, and N, and the survivors and survivor of them, a majority being a quorum, whom all failing, the nearest male heir of the last survivor who shall be major and resident within the United Kingdom at the time: DECLARING ALWAYS, that the said trustees shall not be liable for the insufficiency of securities or insolvency of debtors.

13. *Clause of Registration.*

AND both parties CONSENT to the registration hereof for preservation and execution.

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(a) If it is desired to have curators appointed for the wife to meet cases of emergency, add here, "who are also hereby, without the necessity of any other authority, empowered, on all occasions necessary, to act as curators or curator for the said B in place of her said intended husband."

14. *Testing Clause.*

IN WITNESS WHEREOF, &c.

**2. Antenuptial Contract of Marriage** *where the Curators of one or both of the parties, or the Testamentary Trustees under the Settlement of the Parents of one or both, concur in the Deed.*

1. *Inductive Clause.*

IT is CONTRACTED, AGREED, and MATRIMONIALY ENDED between the parties following—viz., A, eldest son of the deceased G, with the special advice and consent of E and F, surviving and accepting testamentary trustees acting under the trust-disposition and settlement executed by the said deceased G on the                      day of                      , 19                      , and codicil thereto dated the day of                      , 19                      , both recorded in the Books of Council and Session on the                      day of                      , 19                      , of the *first part*, and B, eldest daughter of the deceased X, with the special advice and consent of H, *curator bonis*, nominated and appointed to the said B, conform to act and decree of the Lords of Council and Session, dated the                      day of                      , 19                      (*or state any other source from which the appointment flowed*), of the *second part*, in manner following; THAT IS TO SAY, the said A and B have accepted and hereby accept of each other for lawful spouses, and promise to solemnise their marriage with all convenient speed.

2. *Provisions by the Husband.*

IN CONTEMPLATION OF which marriage, and IN CONSIDERATION OF the conveyance and assignation after written, the said A, with advice and consent foresaid, BINDS and OBLIGES himself, his heirs, executors and successors whomsoever, without the necessity of discussing them in their order, on or before the                      day of                      next, to lay

out and secure the sum of £3000 sterling upon good and sufficient security, either heritable or moveable, bearing interest, and to take the rights, titles, and securities thereof to the said A and the said B, &c. (as at [m] in Form 1, to the end of Article 10, introducing throughout the obligatory clauses of the deed where required, after the name of A, the words, with advice and consent foresaid).

3. *Conveyance and Destination of the Wife's Property.*

FOR WHICH CAUSES, and on the other part, the said B, with advice and consent foresaid, hereby ASSIGNS, &c. (as at [o] in Form 1, to the end of the deed).

3. **Antenuptial Contract of Marriage where the provision to the Wife is, by way of Annuity, payable to her during the life of her Husband.**

1. *Inductive Clause.*

(Take in Article 1 from Form 1.)

2. *Provisions by the Husband:—*

- (1.) *Obligations to secure Annuity and Liferent to the Wife, payable during her Husband's life, and to invest money in heritable property and other securities for behoof of her and of the Children.*

IN CONTEMPLATION OF which marriage, and IN CONSIDERATION OF the provisions hereinafter made in his favour, the said A BINDS and OBLIGES himself, his heirs, executors, and successors whomsoever, without the necessity of discussing them in their order, TO CONTENT

and PAY to the said B, for her aliment, a free liferent annuity of £150 sterling, and that at Martinmas and Whitsunday yearly, by equal portions, beginning the first term's payment thereof at the term of Martinmas (or Whitsunday) that shall happen next after the celebration of the said intended marriage for the proportion of the said annuity to fall due from the date of said celebration to that term, and the next term's payment thereof at the first term of Whitsunday (or Martinmas) thereafter for the half-year immediately preceding, and so forth, half-yearly, termly and continually thereafter, during the lifetime of the said B, with a fifth part more of each of the said termly payments of liquidate penalty in case of failure, and the interest of each of the said termly payments, at the rate of £5 per centum per annum, from and after the term of payment thereof during the not-payment; [q] AND in order to provide a security for the said annuity, the said A BINDS and OBLIGES himself and his foressaids, at the term of Whitsunday, 19 , to lay out and secure the sum of £3000 in the purchase of heritable property, and to take the rights thereof to the said B in liferent, and to himself, whom failing, the child or children who may be born of the said marriage, and the issue of the bodies of said child or children as representing their parent, whom failing, the nearest heirs and assignees whomsoever of the said A, in fee; AND to infest the said B forthwith in said heritable property in liferent: DECLARING ALWAYS that if the free yearly rent or produce of the said liferented property shall happen not to amount to the said sum of £150, the deficiency shall be payable to the said B by the said A and his foressaids; AND that if the said free yearly rent or produce shall exceed the said sum of £150, the surplus shall be payable by the said B to the said A and his foressaids: [AND ALSO DECLARING that the said liferent annuity, and likewise the rents and proceeds of the subjects to be liferented as aforesaid, in security of the foressaid annuity, shall be payable to the said B, and shall belong to her, not only after the death of the said A, in case she shall survive him, but likewise for her aliment during the subsistence of the marriage, and shall accordingly be excluded from the right of administration of the said A, which is hereby renounced by him accordingly: BUT DECLARING that the operation of this provision shall be suspended during the subsistence of the marriage, so long as the said A shall continue to aliment the said B

in a manner suitable to her rank:](a) AND FURTHER, the said A hereby BINDS and OBLIGES himself and his foresaids to lay out and invest, upon good security, either heritable or moveable, the capital sum of £5000 sterling, and to take the rights, obligations, and securities thereof conceived to himself and the said B, and the longest liver of them in liferent, for their liferent use allenarly, and to the child or children who may be born of the said present intended marriage, and the issue of the bodies of such child or children as representing their parents in manner after-mentioned, whom failing, to the heirs or assignees of the said A, in fee; AND as often as the said sum of £5000, or any part of it, shall be uplifted, the said A BINDS and OBLIGES himself and his foresaids to re-invest and again secure the same in the terms above expressed.

(2.) *Provision of the acquirenda.*

AND FURTHER, the said A BINDS and OBLIGES himself and his foresaids, over and above the said sums of £3000 and £5000, to provide, &c. (as at [n] in Form 1, supra, to the end).

**4. Antenuptial Contract of Marriage where the Provision to the Wife is, by way of Annuity, payable to her after her Husband's death.**

1. *Inductive Clause.*

(Take in Article 1 from Form 1, supra.)

2. *Provisions by Husband:—*

*Obligations to secure Annuity and Liferent to the Wife, payable after the Husband's death, and to invest money in heritable property and other securities for behoof of her and of the Children.*

IN CONTEMPLATION OF which marriage, and IN CONSIDERATION OF the provisions hereinafter made in his favour, the said A BINDS and

(a) This article is framed with a view to secure the wife against the insolvency of the husband, and seems much better adapted for the purpose than a conveyance of specific moveable property to the lady in liferent, and the children in fee (see

OBLIGES himself, his heirs, executors, and successors whomsoever, without the necessity of discussing them in their order, to CONTENT and PAY to the said B, for her aliment, a free liferent annuity of £150 sterling, and that at Martinmas and Whitsunday yearly by equal portions, beginning the first term's payment thereof at the term of Martinmas or Whitsunday that shall happen next after the death of the said A for the half-year succeeding; and the next term's payment thereof at the first term of Whitsunday or Martinmas thereafter for the half-year succeeding, and so forth, half-yearly, termly and continually thereafter, during the lifetime of the said B, with a fifth part more of each of the said termly payments of liquidate penalty in case of failure, and the interest of each of the said termly payments, at the rate of £5 per centum per annum, from and after the term of payment thereof during non-payment. *(The rest of the deed will be as in the preceding Form, from [q] to the end, omitting the portion within brackets [ ].)*

##### 5. Antenuptial Contract of Marriage containing a Mutual Conveyance by the Parties.

###### 1. Inductive Clause.

IT IS CONTRACTED, &c. *(as in Article 1, Form 1, supra).*

###### 2. Mutual Conveyance by the Parties.

IN CONTEMPLATION OF WHICH MARRIAGE the said A and B, with and under the conditions and declarations underwritten, DO hereby, with mutual advice and consent, ASSIGN and DISPONE to and in favour of themselves, and the survivor of them in liferent, for their joint liferent and the survivor's liferent use only, and the child or children, and the issue of the bodies of the said child or children who may be

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*Bell's Com.*, 7th ed. I., p. 683, and 6th (Shaw's) ed. I., p. 690, as to this). In the example now given, the parties at whose instance execution is to pass in implement of the contract will be able at any time, and ought without delay, to enforce the investment of the requisite funds by the husband. The only safe course is to secure the provisions by a conveyance to trustees (*see infra*, section II., p. 697).

born of the present intended marriage, in fee; whom failing, to the survivor's heirs and assignees whomsoever, also in fee; ALL AND SUNDRY the whole moveable and personal estate and effects now belonging or due and addebted, or that may belong or be due and addebted to them, or either of them, at the time of the dissolution of the said intended marriage, in any manner of way, with the vouchers, grounds, and instructions thereof, and all that has followed or is competent to follow thereupon: AND FURTHER, it is hereby expressly CONDITIONED, that the said parties shall, and they hereby BIND and OBLIGE themselves, on or before the                      day of                      next, to uplift the sum of £1000 sterling of the proper means and effects of the said B, and at the sight and to the satisfaction of the person or persons in whose name, as trustee or trustees, it is herein-after stipulated that execution shall pass for implement of this contract in favour of the said B, TO LAY OUT AND INVEST (a) the said sum of £1000 upon good and undoubted security, heritable or moveable, bearing interest, and payable to the said A and B, and the survivor of them, in liferent only as aforesaid, and to the child or children who may be born of the marriage, and the issue of the bodies of such child or children, in fee; whom failing, to the said survivor's heirs or assignees whomsoever, also in fee; but always under the declaration, exclusion, and renunciation after-written; with power to the said A and B, at the sight and with the consent of the trustee or trustees aforesaid, to renounce and discharge, and to DISPONE, ASSIGN, and CONVEY the said securities and sums therein contained, they being always bound to reinvest and again secure the sum to be received by them, in the terms above specified: DECLARING that the liferents above provided or to be provided are alimentary only, and in so far as payable to the said B shall be payable on her own acceptance, and shall not be arrestable or affectable by the debts or deeds of the said A and B, or either of them, or of the survivor, or by the diligence of their, his, or her creditors; and in the event of the insolvency of the said A, his said liferent right shall *ipso facto* cease and determine, and the said liferent of the said sum of £1000 invested as aforesaid shall thenceforth belong to the said B, exclusive of the right of administration

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(a) To render the wife's interest under this contract secure, the investment here directed must be actually made, and it will be the duty of the execution trustees to see that it is forthwith made as directed.

of the said A, which is hereby debarred, excluded, and renounced by him; which declaration, exclusion, and renunciation shall be inserted in the security and re-investments foresaid: **AND FURTHER DECLARING** that, until the said investment be made, the foresaid sum of £1000, being part of the effects above assigned, hitherto belonging to the said B, shall not be arrestable nor affectable by the debts or deeds of the said A, nor by the diligence of his creditors, and to that extent he hereby renounces his right of administration over the effects above assigned, hitherto belonging to the said B.

Any other articles that are desired may be taken from preceding Forms.

**6. Antenuptial Contract of Marriage containing Restrictions of the Wife's provisions.**

Restrictions of the wife's provisions are usually made in contemplation of one or more of the following events:—

- (1.) The event of there being issue of the marriage.
- (2.) The event of the wife entering into a second marriage after the death of the husband, while issue of the first marriage survive.  
And,
- (3.) The event of the wife entering into a second marriage under any circumstances.

*(A.) Restriction in Case of Issue.*

**BUT DECLARING ALWAYS** that it is a **CONDITION** of this contract, that if any child or children of the said intended marriage, or the lawful issue of the bodies of such child or children, shall exist at the dissolution of the said intended marriage by the decease of the said A, **THEN** and in that case the said B's liferent of the foresaid sum of £                      (or the said annuity of £                      , interest and penalty corresponding thereto, *as the case may be*), shall be and is hereby **RESTRICTED** to a free liferent of £                      (or to an annuity of £                      , with corresponding interest and penalty, *as the case may be*), payable as aforesaid, and that so long as such child or children, or the lawful issue of their bodies, shall be in life: **BUT** if such child or children, and the lawful issue of their bodies, fail by death during the lifetime

of the said B, then and in that case the said limitation and restriction shall cease and determine, and the said B shall thenceforth have right to and enjoy the liferent of the whole foressaid sum of £            yearly during her life (*in the case of an annuity, say, the whole of the said annuity of £            , with corresponding penalty and interest as before mentioned*), beginning the first term's payment at the first term of Whitsunday or Martinmas which shall happen next after the failure of all the children of this marriage, and the issue of their bodies; and so forth, during the lifetime of the said B, in manner and in the proportions above specified: [DECLARING ALWAYS that in the event of the insolvency of the said A, whether before or at the dissolution of the said intended marriage by his decease, the said restriction and limitation shall cease, and the said B shall be entitled to and shall enjoy the whole of the said unrestricted liferent of £            (*or the said annuity of £            , and corresponding interest and penalty, as the case may be*), and shall, after the said event, maintain and support the child or children of the said intended marriage out of the surplus of the liferent to be enjoyed under this declaration, above that which would have arisen under the restriction above stipulated, if the same had taken place.]

(B.) *Restriction in Case of Wife's Second Marriage, while Issue of the First Marriage survive.*

This restriction should follow the immediately preceding clause, and may be thus expressed:—

AND DECLARING ALSO that if the said B shall enter into a second marriage during the existence of a child or children of the marriage hereby contracted, or the issue of the bodies of such child or children, then and in that event the said restricted liferent (*or annuity, as the case may be*) of £            shall be further restricted to the sum of £            sterling yearly (*in the case of an annuity, add, payable at the terms, and with corresponding interest and penalty as aforesaid*): PROVIDING, nevertheless, that upon the failure of issue of the marriage hereby contracted, the foressaid liferent (*or annuity of £*) shall, notwithstanding such second marriage, be increased

to the said sum of £                      (*here insert the sum provided in case of the existence of children and no second marriage*).(a)

(C.) *Restriction on Second Marriage under any circumstances.*

BUT DECLARING that in the event of the said B entering into a second marriage, the liferent (*or annuity, as the case may be*) hereinbefore provided shall be, and the same is hereby restricted to £ sterling yearly, payable at the terms and with corresponding interest and penalty as aforesaid, as and from the date of such second marriage.

(D.) *Clause of Forfeiture on Second Marriage.*

BUT DECLARING that in the event of the said B entering into a second marriage, the liferent (*or annuity, as the case may be*) hereinbefore provided shall *ipso facto* cease and determine as at the date of such second marriage.

**7. Antenuptial Contract of Marriage containing Obligation to secure Provisions to a Wife and Children over a Foreign Estate.**

Where it is intended to secure the provisions to the wife and children over a foreign estate, the deed will be as in Form 1, p. 654, to the end of Article 10, on p. 660, or in the form illustrated in any of the other examples given above, and will then proceed as follows:—

AND FURTHER, in respect the said A has resolved and agreed to secure absolutely the provisions above mentioned in favour of his promised wife, and the child or children to be procreated of the said intended marriage, and to make the same a lien or real and preferable burden upon his lands and estate of Z, in the island of Jamaica; THEREFORE he hereby BINDS and OBLIGES himself, and his heirs and successors, within three calendar months after the date hereof, and

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(a) If no restriction be intended in the event of the existence of children, or if it be meant to restrict the provisions to the same sum in both events, the necessary alterations on the preceding clause are obvious. And a restriction of the provision of furniture, or a sum of money in lieu thereof, may be combined with either or both of the above clauses.

at his own expense, to grant all deeds which may be necessary for effectually securing the whole of the said provisions, and rendering the same a lien and real and preferable burden upon the said lands and estate of Z, in the island of Jamaica, and the whole buildings thereon, and hereditaments, privileges, and appurtenances appertaining thereto; which securities shall be taken and conceived in terms approved of by counsel learned in the laws of the said island, in favour of the trustees after named, with all the powers and privileges competent to gratuitous trustees by the law of Scotland—viz., L, M, and N, and the acceptors and acceptor, survivors and survivor of them, and executors or administrators of such survivor, as trustees for behoof of the said B and the said child or children, and in trust for the uses, ends, and purposes of these presents, which shall be specially referred to in the said securities, and the said trustees or trustee acting for the time are hereby, and shall, by the deeds or securities to be granted as aforesaid, be empowered to sue for implementation thereof, and to take all legal measures which may be necessary for that purpose, and for rendering the same effectual according to the true intent and meaning hereof, on condition always of their applying the proceeds in the terms above specified, and for the purposes of these presents (*power should then be given to reinvest, and all other usual powers, declaring that the debtor shall have no concern with the application of the moneys to be paid by them, nor with any of the conditions of this contract*): AND the said A, in the event of his dying before the execution and delivery of the said deed or deeds necessary for creating the lien and real and preferable burden foresaid on his said estate and premises in the said island of Jamaica, NOMINATES and appoints F and S, both of the said island of Jamaica, Esquires, or either of them, his attorneys or attorney irrevocable, to appear before the registrar of the said island, or other official as may be necessary, and to obtain these presents registered in the said island, so as to render the covenants hereinbefore contained on behalf of his said intended wife and the child or children of the marriage a lien and real and preferable burden on his said estate and premises. (a) (*The deed will then proceed as in Form 1, to the end of the clause of registration; but it*

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(a) Though we give the above style, we recommend that any party requiring to frame such a deed should consult English lawyers as to the proper form to be adopted.

*must be executed and attested in the manner required by the law of Jamaica.)*

**8. Antenuptial Contract of Marriage** *where the Wife's Personal Estate with the Income is secured to herself by force of Statute, and Provisions made by her to Husband and Children.*

This deed will be as in Form 1, *supra*, p. 654, to the end of Article 10 on p. 660, and will then proceed as follows:—

FOR WHICH CAUSES, and on the other part, the said B hereby ASSIGNS to the said A as tocher the sum of £1000 contained in a deposit-receipt in her favour by the Bank, dated , and which sum the said A hereby accepts in full satisfaction of all courtesy, legal share of moveables, and every other thing that he could ask, claim, or demand from the said B, or her heirs, executors, and representatives, by and through her death, if he shall survive her: AND the said A hereby RENOUNCES all rights of succession and other rights whatsoever competent to him in or over the estate of the said B now belonging or which shall belong to her during the subsistence of said intended marriage: DECLARING that it shall be competent to the said B alone, without consent of the said A, to dispose of her estate by deed *inter vivos* or *mortis causa* as she thinks proper: AND FURTHER, the said B BINDS and OBLIGES herself to pay to the child or children of the said intended marriage the sum of £2000, and that at the first term of Whitsunday or Martinmas which shall happen after her death, and that in such shares and proportions, if more than one, as shall be appointed by any writing under her hand executed by her at any time of her life, and failing such appointment, then equally among the said children, share and share alike: DECLARING that if any of said children shall predecease the said B leaving lawful issue, such issue shall come in place of their parent or respective parents, and shall be entitled (subject always to the said power of appointment) to the share or shares, both original and accruing, of the said sum of £2000 to which their parent or respective parents would have been entitled had he or she survived.

If this manner of dealing with the wife's estate is adopted, the clause on p. 659, declaring that the children's provisions are in full of legitim, will be omitted in its place, but will be inserted after the above provi-

sions in their favour made by the wife, and will thus apply to the provisions made both by husband and wife.

In this example the wife retains her estate granting provisions to her husband and children in lieu of their legal claims. It may, however, be desired that, in addition to the protection afforded to the wife by the Married Women's Property Act of 1881 to the effect of securing her personal estate with the income thereof to herself, it should be guarded against the effects of the husband's insolvency by conventional arrangement. The most effectual method of guarding against such a contingency is a conveyance of the wife's estate to trustees. But cases may occur in which such a plan may not be considered expedient, and the conveyancer will have to frame the deed so as effectually to exclude the husband's rights, or otherwise guard against the danger referred to.

**9. Antenuptial Contract of Marriage containing Conveyance and Destination of Specific Moveable Estate and Funds belonging to the Wife.**

This deed will be as in Form 1, *supra*, p. 654, to [p] on p. 661, and will then proceed as follows:—

AND WHEREAS the said B has also due to her the sums of money following, viz.—(*here specify them*), amounting in whole to the sum of £5000: AND WHEREAS it is AGREED upon by both parties that the interest of the said principal sums which make up the said sum of £5000 shall belong to the said A during the subsistence of the marriage [*or, during his lifetime*], and that the said principal sums themselves shall still remain the property of the said B, and at her disposal; THEREFORE the said B, by these presents, ASSIGNS to the said A the interest of the said sum of £5000 during the subsistence of the marriage [*or, during his lifetime*]: BUT RESERVES to herself full power and liberty, by herself alone, without consent of the said A, to settle or assign, by way of testament or other deed [*if A is to have the liferent, say, but always under burden of the fore-said liferent in favour of the said A*], the said principal sums themselves; as to which his right of administration is hereby excluded, and the same is hereby renounced by the said A: AND in case it shall be necessary to uplift any part of the said principal sums during the subsistence of the marriage, it is hereby AGREED and PROVIDED that the same shall be paid to and discharged by the

said B only, with consent of L, M, and N, hereinafter mentioned, as the parties at whose instance execution is to pass in reference to the said B's provisions, and at whose sight the same shall be re-invested, and the bonds or other securities taken payable to the said B, her heirs, executors, or assignees, to the continued exclusion of the right of administration of the said A, but subject to his right during the subsistence of the marriage [*or, during his lifetime*], as above provided. (*a*)

**10. Antenuptial Contract of Marriage** *wherein the Husband's Family Estate is provided to the Heirs of the Marriage.*

(1) Induc-  
tive clause.

IT IS MATRIMONIALY CONTRACTED and AGREED between A (*designation*), on the one part, and B (*designation*), on the other part, in manner following: THAT IS TO SAY, the said A and B have agreed to accept, and hereby accept, of each other as lawful spouses, and promise to solemnise their marriage with all con-

(2) Disposi-  
tion of estate  
to heirs-  
male, &c., of  
marriage.

venient speed: IN CONTEMPLATION OF which marriage the said A, heritable proprietor of the lands and estate hereinafter described, hereby DISPONES to and in favour of himself and the heirs-male of the said intended marriage, whom failing, to the heirs-male of his body by any subsequent marriage, whom failing, to the heirs whomsoever of the said intended marriage, whom failing, to the heirs

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(*a*) If the wife is to receive both principal and interest for her own disposal, the following may be substituted for the clause in the text:—"AND WHEREAS the said B has also due to her the sums of money following, viz. :—(*here specify them*), "amounting in whole to the sum of £5000: AND WHEREAS it is agreed upon by "both parties that the said principal sums which make up the said sum of £5000, "and whole interest therein, shall still remain the property of the said B, and be "at her disposal: THEREFORE the said B hereby expressly reserves to herself "full power, by herself alone, without consent of the said A, to uplift and "receive the said principal sums and interest thereon, and to grant discharges and "conveyances thereof, and to assign the same by testament or other deed, the "right of administration of the said A being hereby excluded as respects the said "sums, and the same is hereby renounced by the said A; and in case it shall be "necessary to uplift the said principal sums, or any part thereof, during the sub- "sistence of the marriage, it is agreed that it shall be in the power of the said B, "by herself alone, without the consent of the said A, to discharge and reinvest the "same and to take the securities to be granted thereof payable to herself, and "her heirs, executors, or assignees, to the continued exclusion of the right "of administration of the said A." [If it is thought that the wife should not have the unrestricted power of calling up and reinvesting the money, the consent of the friends at whose instance execution is to proceed may be required as in the example in the text.]

whomsoever of the body of the said A by any subsequent marriage, whom failing (*here insert such further destination as may be agreed upon*), whom all failing, to the said A, his heirs, and assignees, whomsoever—the eldest heir-female always excluding heirs-portioners and succeeding without division throughout the whole course of succession—heritably and irredeemably, but under the real and preferable burden always of the annuity hereinafter provided to the said B, ALL AND WHOLE the lands and estate of X (*here describe or validly refer to the lands, and real burdens, conditions, &c., already constituted, if any*), together with all his, the said A's, right, title, and interest, present and future, therein: DECLARING ALWAYS that notwithstanding the destination before written, the said A shall have full power to alter the said destination, or to make any addition thereto which he may think proper, provided always that the order of succession shall not be so altered as to prejudice the right of succession of the issue of the marriage hereby contracted: AND the said A shall have power to execute a strict entail of the whole or any part of the lands above described, in terms of the destination before written, with any alterations thereon or additions thereto which may be made by him as before mentioned: WITH ENTRY at the date of the said intended marriage: AND the said A assigns the rents: AND the said A assigns the writs: AND the said A grants warrandice: [o] AND FURTHER, the said A hereby PROVIDES and DISPONES to the said B, IN LIFERENT, during all the days of her life after his decease, in case she shall survive him, ALL AND WHOLE a free liferent annuity or jointure of £ (3) Power to alter destination and entail. stg. per annum, exempted from all burdens and deductions whatsoever, to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms that shall happen after the decease of the said A, for the half-year following, and so forth half-yearly and termly thereafter in advance during the lifetime of the said B, with a fifth part more of each term's payment of the said annuity of liquidate penalty in case of failure in the punctual payment thereof, and the interest of the said annuity at the rate of 5 per centum per annum from the respective terms of payment thereof during the non-payment of the same, furth of ALL AND WHOLE the said lands and estate of X as hereinbefore particularly described (*or referred to*), or furth of any part or portion thereof, and readiest rents, profits, and duties of the same: AND the said A (4) Annuity to widow.

(5) Provi-  
sion for  
widow's  
mournings.

(6) Provi-  
sion of  
interim alim-  
ent.

(7) Provi-  
sions to  
children  
other than  
child suc-  
ceeding to  
the estate.

assigns the writs, and also the rents of the foresaid lands and estate, but only in so far as necessary to make effectual the annuity hereby granted; AND the said A grants warrandice: AND the said A BINDS himself, and his heirs and successors in the said lands and estate, and *subsidiarie* his other heirs, successors, and representatives whomsoever, to make payment of the said annuity to the said B at the foresaid terms, with interest and penalty as before mentioned, if incurred: AND the said A further BINDS himself, and his heirs, successors, and representatives whomsoever, within three months after his death, to make payment to the said B, in case she shall survive him, of the sum of £                    stg. as an allowance for her mournings; AND he BINDS himself and his foresaids to aliment and maintain the said B suitably to her station during the subsistence of the marriage, and thereafter until the first half-yearly payment of the annuity provided to her under these presents shall be made: AND FURTHER, the said A hereby BINDS and OBLIGES himself, and his heirs, successors, and representatives whomsoever, to make payment at the first term of Whitsunday or Martinmas after his decease of the sum of £                    sterling to the child or children to be born of the said intended marriage who shall survive him, other than the child who shall then be entitled to succeed to the said lands and estate, with a fifth part more of liquidate penalty in case of failure, and interest thereof at the rate of 5 per centum per annum from and after the said term of payment during the not-payment: DECLARING ALWAYS that the lawful issue of any child who may predecease the said A leaving issue, shall be entitled to such share, both original and accruing, of the said provision as would have fallen to such child if he or she had survived; AND FURTHER, that the lawful issue (other than the heir succeeding to the said lands and estate) of the child who would, in the event of his or her survivance, have been entitled to succeed to the said lands and estate, but who shall have died without having acquired a vested right thereto, and who shall not succeed to the same, shall be entitled *per stirpem* to an equal share with the other children of said intended marriage of the said provision: (a) AND the said provision of £                    shall be divided

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(a) It will be kept in view that this provision in favour of the younger children of an heir-apparent who does not succeed to the estate is a specialty framed on the analogy of section 10 of the Entail Amendment Act of 1875, as amended by section 3 of the Entail Amendment Act of 1878, and may not in all cases be considered advisable by the parties.

among the children and issue of children entitled to participate therein, in such shares and proportions as the said A shall appoint by any writing under his hand, and failing such appointment, then equally between or among such surviving children and issue of deceased children *per stirpes*—THAT IS TO SAY, any deceased child's issue entitled to participate therein as hereinbefore written being reckoned as in place of and representing such child, and being entitled to one share accordingly: AND the said A BINDS and OBLIGES himself and his foresaids to aliment, educate, and maintain the child or children to be born of the marriage hereby contracted, in a manner suitable to their station, during the subsistence of the marriage and until they shall have right to their provisions under these presents, or until they shall be otherwise properly provided for: WHICH PROVISIONS before written, conceived in favour of the said B and the children of the marriage hereby contracted, are hereby accepted by the said B, and declared by the contracting parties to be in full satisfaction to the said B and the said children respectively, of all terce of lands, *jus relictæ*, legitim, and everything else which the said B could claim by or through the decease of the said A, or which the said children could claim by and through the decease of their said father and mother, or either of them, excepting only what they may inherit under his or her will, or by intestacy: FOR WHICH CAUSES, AND ON THE OTHER PART, the said B hereby ASSIGNS and DISPONES to the said A, and his heirs and assignees whomsoever, the whole estate, means, and effects, heritable and moveable, real and personal, of every kind and wherever situated, now belonging to her, or to which she may succeed or acquire right during the subsistence of the marriage hereby contracted (a)—[If a special conveyance of any particular subjects be deemed necessary or desired, here add—AND in particular, and without prejudice in any way to the foresaid

(8) Power of appointment.

(9) Obligation to maintain children.

(10) Discharge of wife's and children's legal rights.

(11) Conveyance of wife's estate to husband and his heirs, &c

(a) As regards the conveyance by the wife, this form which appeared in the former editions of this work, is retained, but as the law now stands, a wife who marries without a Marriage Contract is entitled to retain her own property for her own use during her lifetime, and her husband has only the rights in it conferred upon him by the Married Women's Property Act, 1881, and it is most unlikely that any wife, in consideration of an annuity secured to her after her husband's death, would now deprive herself during her lifetime of the full use and enjoyment of her own property entirely, and therefore, instead of the conveyance to her husband as contained in this form, there would probably now be substituted a conveyance to trustees whereby the wife would enjoy the liferent of her own property during her life, with a liferent to her husband after her death, and the fee would go to the children of the marriage. Such a form will be found on p. 701.

general conveyance, the said B hereby ASSIGNS and DISPONES to the said A, and his heirs and assignees whomsoever (*here may be specified any vested rights of succession, and any bonds or other securities forming investments of the lady's estate, of which it may be proper or necessary to have a special assignation in some such form as the following, viz. :—(First) The one-sixth share of the residue of the estate and effects of the now deceased* , to which the said B became entitled under his Trust-Disposition and Settlement, dated , and recorded in the Books of Council and Session the day of , &c.—*specifying the special subjects in articulate form*)]—with the whole writs, titles, vouchers, and securities thereof, and all that has followed or may follow thereon: EXCEPTING always from this conveyance all such effects now belonging to her as are usually known as *paraphernalia*, and all effects of a similar kind which she may acquire during the subsistence of the marriage, all of which are hereby reserved to her for her own sole and separate use: AND the said B BINDS herself to grant or concur in granting all further writs or deeds which may be necessary to give effect to the before written conveyance: AND (LASTLY) it is hereby PROVIDED and DECLARED that execution shall pass hereupon for implement of the several obligations before written in favour or for behoof of the said B or the issue of the marriage, at the instance of (*here name the persons at whose instance execution is to pass, as on p. 661*), and the survivors, and survivor of them, whom all failing, the nearest male heir of the last survivor who shall be major and resident within the United Kingdom at the time:

(12) Excep-  
tion of para-  
phernalia,  
&c.

(13) Ap-  
pointment  
of trustees  
to secure im-  
plement of  
provisions.

(14) Consent  
to registra-  
tion.

AND both parties consent to registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

An additional clause will be inserted at [o], p. 675, when it is expected that the husband may succeed to some other estate which it is intended shall also be settled upon the heirs of the marriage. It is often considered desirable that the two estates should not be possessed together by the same person at the same time; and if it is wished to provide against such an event, the clause may be in these terms:—

AND FURTHER, in case the right of succession to the lands of Y in the county of Z, at present belonging to W, shall at any time open to the said A, he BINDS and OBLIGES himself to provide and dispose the said lands of Y to himself and the heirs-

Provision  
for heir's  
succession  
to another  
estate.

male of the marriage hereby contracted, other than the heir who may be entitled on his death to succeed to the said lands and estate of X, and the heirs whomsoever of the body of such heir, whom failing, to the other persons called in terms of the destination before written to the succession of the said lands and estate of X after the heirs-male of the marriage hereby contracted, with the same powers to the said A of altering or adding to the destination of the said lands of Y, as are before reserved to him with reference to the destination of the said lands and estate of X: BUT WHEREAS it is the desire of the parties hereto, and formed part of the arrangements under which these presents are granted, that the said lands and estate of X hereby disposed, and the said lands of Y, shall not be held and enjoyed by one and the same person at one and the same time after the death of the said A: THEREFORE it is hereby PROVIDED and DECLARED that if any of the heirs of the marriage hereby contracted, succeeding to the said lands and estate of X before disposed, shall also happen to succeed to the said lands of Y, or if any of the heirs of the marriage succeeding to the said lands of Y shall happen to succeed also to the said lands and estate of X, then, and in either of these events, unless such heir so succeeding shall be the sole heir of the marriage in existence, the heir so succeeding shall be bound, immediately on the event happening by which he or she shall become the heir entitled to the possession of both estates under the respective destinations or investitures thereof, to denude and divest himself or herself of the said lands of Y, or, in his or her option, of the said lands of X, in favour of the next heir not descended of his or her body, called to the succession of the same under the destination before written, or any altered destination thereof which may have been made by the said A as aforesaid, and the substitute heirs called to succeed to such last-mentioned heir, according to such destination; AND the heir in whose favour he or she is required to denude, and the heirs called to the succession after such heir, shall be entitled to sue the heir so bound to denude, and any intermediate heirs descended of the body of such heir, for the fulfilment of the obligation and condition to that effect hereinbefore written, and to take all steps which may be necessary, by declarator, adjudication, or otherwise, for establishing in his or her person the right and title to the possession of the said lands of Y, or of the said lands

and estate of X, and that without his or her being subjected to or made liable for the debts or deeds of the person or persons so denuding or bound to denude in his or her favour: AND the said A shall be entitled to insert in any deed or deeds of entail to be granted by him of the said lands and estate of X, or of the said lands of Y, or any part or parts thereof respectively, a clause of devolution in the terms before written, or in any other terms which may be more effectual for carrying out the wishes of the parties hereto, as hereinbefore expressed.

**11. Contract of Marriage where the Husband has only a  
Personal Right to the Estate.**

In this case no essential alteration takes place in the form just given. It is only necessary to bind the husband to take the requisite steps to complete his title, and his obligation (which should be inserted immediately after the dispositive clause) may be in the following or similar terms:—

Obligation  
to complete  
title.

AND the said A BINDS and OBLIGES himself, within  
months from the date hereof, to complete a proper feudal title in his person to the lands and others before disposed, at the sight and to the satisfaction of \_\_\_\_\_, W.S., Edinburgh, whom the said A hereby authorises to sign for him and on his behalf, and to present all or any petitions which may be deemed necessary or proper for his service as heir, whether of line or of provision, in general or in special, to any of his ancestors or predecessors in the said lands and others, and to do everything else which may be considered necessary or proper for completing a valid feudal title to the same in the person of the said A.

But in all cases where it is possible, it is certainly desirable that the title should be complete before the signing of the contract.

**12. Contract of Marriage where the Heritable Estate belongs to the Wife, or where both Spouses are possessed of Estates.**

In cases of this nature the necessary alterations upon the forms already given are so obvious as scarcely to require illustrations.

If both parties be possessed of estates, the only variations will be in the provisions by the wife; but if the husband has no landed estate, he will become bound to provide and secure a certain sum upon proper security, the rights to be taken to the husband and wife and the survivor of them in liferent allenary, and to the children in fee, or he will oblige himself to pay a certain annuity to the wife and certain provisions to the children, and in security thereof to lay out and invest a specified sum of money corresponding thereto, in the names of trustees, upon good heritable security, or upon such other investments as it may be thought proper to specify. Clauses to answer these purposes will be found in the previous Forms.

The principal part of the deed, so far as concerns the wife, will be the settlement of her heritable estate, the ordinary destination in such a case being—

To herself and her said intended husband, in conjunct fee and liferent, for the liferent use allenary of the said A, and to the heirs-male to be born of the marriage hereby contracted, and the heirs whomsoever of their bodies in fee, whom failing, to the heirs-male of the body of the said B (*the wife*) by any subsequent marriage, and the heirs whomsoever of their bodies, whom failing, to the heirs whomsoever of the body of the said B by the marriage hereby contracted, or by any subsequent marriage, whom failing, to the nearest heirs and assignees of the said B—the eldest heir-female always excluding heirs-portioners and succeeding without division throughout the whole course of succession.

Power may be added, if desired, to alter the destination, but not so as to prejudice the rights of succession of the issue of the marriage; also, if desired, a power to entail, as given in Form 10 in the case of the husband's lands. If it is intended that the husband should only have an annuity out of the wife's estate, then the Form 10 will answer, *mutatis mutandis*.

**13. Contract of Marriage where the Heritable Estate of either party is Entailed, with Provisions for the Spouses and Children, granted under Powers in the Entail.**

Where the estate is entailed, there is no room for a settlement of such estate in the marriage-contract. The provisions and stipulations in

favour of the contracting parties and of the younger children of the marriage must be regulated either in terms of the entail, or in accordance with the provisions of the Aberdeen Act (5 Geo. IV. c. 87), and subsequent statutes. We shall exemplify both cases, and first, where the provisions settled by the contract are intended to be in conformity with the powers conferred upon the heirs of tailzie in possession, by the terms of the entail. In the following example the estate is supposed to belong to the husband, and the entail to empower him to infeft his wife in a liferent locality (a form, however, which has various inconveniences, and is now but rarely adopted) and to provide certain portions to the younger children.

(1) Induc-  
tive clause.

IT IS MATRIMONIALLY CONTRACTED, &c. : IN CONTEMPLATION OF which marriage the said A, CONSIDERING that he is heir in possession of the entailed lands and estate of X, under a Disposition and Deed of Entail executed by M of date the \_\_\_\_\_, recorded in the Register of Tailzies the \_\_\_\_\_ day of \_\_\_\_\_, and in the Books of Council and Session the \_\_\_\_\_ day of \_\_\_\_\_,

(2) Wife's  
provision.

in favour of himself the said M, and the heirs-male of his body, whom failing, the other heirs of entail there mentioned ; AND that certain powers are thereby conferred upon the heir of entail in possession for the time to grant provisions to spouses and children in manner underwritten : THEREFORE, in exercise of said powers, the said A hereby PROVIDES and DISPONES to the said B (*the wife*) in liferent during all the days of her life after his decease, in case she shall survive him, ALL AND WHOLE (*here describe or validly refer to the particular lands over which the wife's infeftment is to extend*) : BUT ALWAYS with and under the conditions, provisions, and others above referred to contained in the said Disposition and Deed of Entail (*here will follow the usual formal clauses of Assignment of Writs and Rents, and of Warrandice, and any other provisions in favour of the wife, as in Form 10, and then the Contract may proceed thus*)—AND FURTHER, the said A hereby BINDS and OBLIGES himself, and the heirs of entail succeeding to him in the foresaid lands and estate, &c. (*here the obligation ought to be strictly adapted to the powers and faculties contained in the Deed of Entail, and should contain all the restrictions and provisions which are by the entail declared to affect provisions allowed to be granted to younger children ; and then there may be added a general clause in these terms*)—DECLARING ALWAYS that

(3) Child-  
ren's pro-  
visions.

in case the said liferent infeftment and other provisions before mentioned, or any of them, shall be found to exceed the amount of

the provisions which the said A is entitled, in terms of the said Disposition and Deed of Entail, to grant to his wife and children respectively out of the said entailed lands and estate, the same shall be subject to restriction, and shall be voidable to the extent of the excess, but no further, and without prejudice to the said provisions in any other respect. (*The deed will conclude with the usual clauses, as shown in Form 10.*)

It frequently happens that the provisions in favour of the wife and children permitted by the entail are considered too small. This is particularly the case in some of the old entails, owing to alteration in the value of money since the entail was executed. It is therefore necessary in such cases, if the powers of the Aberdeen Act are not resorted to, that additional provisions be made by the husband. Life insurance affords convenient means of effecting this object. The husband may be taken bound to insure his life for such a sum, payable on his death to the younger children of the marriage, as may be considered a sufficient provision, and to pay the premium of such insurance, and a power may be conferred on certain persons as trustees to enforce implement of this obligation, or a bond of annuity and disposition in security of the granter's life-interest in the entailed estate may be granted in favour of the trustees, of an amount sufficient to cover the yearly premium.

See in connection with the following styles:—The Aberdeen Act (5 Geo. IV. c. 87) (which is made applicable to all entails, unless where its operation is excluded by the deed of entail or trust deed, by section 8 of the Entail Amendment Act, 1868 (31 & 32 Vict. c. 84)); The Entail Amendment Act, 1868, s. 6; The Entail Amendment Act, 1875, s. 10; and The Entail Amendment Act, 1878, s. 3.

**14. Contract of Marriage where the Heritable Estate is Entailed, and Provisions are granted under the powers of the Aberdeen Act and the Entail Amendment Acts of 1875 and 1878.**

IT IS MATRIMONIALY CONTRACTED, &c.; IN CONTEMPLATION OF (1) Induc-  
 which marriage the said A, being heir (or institute, as the case may tive clause.  
 be) of entail in possession of the entailed lands and estate of X, in  
 the county of Y, and in virtue of the Entail Provisions Act, 1824,  
 hereby PROVIDES and DISPONES to the said B (*the wife*) in liferent (2) Provision  
 during all the days of her life after his decease, in case she shall of annuity  
 survive him, ALL AND WHOLE a free liferent annuity or jointure to wife.  
 of  
 £           sterling per annum, exempted from all burdens and deduc-  
 tions whatever, to be uplifted and taken at two terms in the year,  
 Whitsunday and Martinmas, by equal portions, beginning the first

term's payment thereof at the first of these terms that shall happen after the decease of him the said A, for the half-year following, and so forth half-yearly and termly thereafter in advance (a) during the lifetime of the said B, with a fifth part more of each term's payment of the said annuity of liquidate penalty in case of failure in the punctual payment thereof, and the interest of the said annuity at the rate of £5 per centum per annum from the respective terms of payment thereof during the not-payment of the same, furth of ALL AND WHOLE (*here describe or validly refer to the lands*), or furth of any part or portion of the said entailed lands and estate, and readiest rents, profits, and duties thereof: DECLARING ALWAYS that the said annuity or jointure of £ , as affecting the said entailed lands and estate, or rents and duties thereof, or the heirs of entail succeeding thereto, is provided by the said A, and accepted by the said B, under all the conditions, restrictions, and limitations applicable to such annuities which are contained in the said Act of Parliament and subsequent Entail Statutes: AND the said A assigns the writs, and also the rents, but only in so far as necessary to make effectual the right hereby granted: AND the said A grants warrantice, but always under the conditions, restrictions, and limitations before referred to (*here insert any other provisions in favour of the wife, as in Form 10*): AND FURTHER, in virtue of the foresaid Act of Parliament, and of "The Entail Amendment (Scotland) Act, 1875," and "The Entail Amendment (Scotland) Act, 1878," the said A, as heir of entail in possession of the said entailed lands and estate, hereby BINDS and OBLIGES himself, and the heirs of entail succeeding to him therein, to make payment out of the rents and proceeds of the same, to the child or children to be born of the marriage hereby contracted who shall survive him the said A, other than the heir entitled to succeed at his death to the said entailed lands and estate, or to the representatives of any child or children of said marriage predeceasing him who may be entitled to claim as in right of such child or children, including the lawful issue (other than the heir succeeding as aforesaid) of any predeceasing child who if he or she had survived would have been entitled to succeed to the said entailed lands and estate, of the sums of money or provisions following, bearing interest in terms of the Statute, and payable one year after the

(8) Provisions to younger children.

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(a) See *Lamont Campbell v. Carter Campbell*, 1895, 22 R. 260.

death of the said A—viz., if one such child the sum of £ sterling, if two such children the sum of £ sterling, and if three or more such children the sum of £ sterling: AND DECLARING that these provisions are granted by the said A under the whole conditions, restrictions, and limitations contained in said Statutes or any of them; and shall be divided and apportioned between or among the children or representatives of children entitled thereto, in such manner as the said A shall appoint by any deed or writing under his hand; and failing such appointment, the said provisions shall belong to and be divided between or among such children and representatives of children in equal shares, *per stirpes*—the representatives of any deceased child who shall be entitled to claim as aforesaid being held to come in place of such child, and having right to a share accordingly. (*Here may follow the obligation to aliment the children, the acceptance by the wife of her provisions, and declaration as to the provisions to her and the children being in full of their legal claims, the assignation or settlement by the wife of her fortune, the appointment of the persons at whose instance execution shall pass for implement of provisions to wife and children, and registration and testing clauses as given in Form 10.*)

If it is not intended to extend the benefit of the provision in favour of children to the issue of a predeceasing heir-apparent, the provision may be worded as follows.

AND FURTHER, the said A, as heir of entail in possession of the said entailed lands and estate, and in virtue of the foresaid Act of Parliament, and subsequent Entail Statutes, BINDS and OBLIGES himself, and the heirs of entail succeeding to him in the said entailed lands and estate, to make payment out of the rents and proceeds of the same, to the child or children to be born of the marriage hereby contracted who shall survive him the said A, other than the heir entitled to succeed at his death to the said entailed lands and estate, or to the issue or representatives of any such child or children predeceasing him who may be entitled to claim as in right of their parent or parents, of the sums of money or provisions following, &c. (*as in the preceding Style*).

Where  
younger  
children of  
heir-  
apparent  
not to  
participate.

When the entailed estate belongs to the wife, and provisions to husband and children are to be granted under the authority of the Aberdeen

Act, corresponding changes will of course be made in the form of the contract.

We may here observe that when the entailed estate is already so burdened with provisions that the heir in possession cannot grant provisions to the full extent permitted by the Aberdeen Act, it may become competent for him, under section 6 of that Act, in consequence of the payment or extinction of the whole or of part of the previous burdens, to enlarge the provisions already granted by him in favour of children. This is not the place for examples of the manner by which such objects may be effected, but we may remark that in the event of the intended husband being able and willing to discharge existing provisions, so as to leave the estate free for the new provisions, he ought to do so *before the marriage*, as the Act empowers the heir in possession to grant provisions to children to the extent which may be "open or unexercised for the time." While, therefore, a subsequent bond of provision would possibly be free from objection, the matter ought not to be left to future arrangement where the party has the means of making the provision secure.

**15. Contract of Marriage where the Husband is Heir-Apparent to an Entailed Estate, with provisions by him with consent of the Heir in Possession.**

Under the Entail Amendment (Scotland) Act of 1868, s. 6, it is now competent for the heir-apparent to an entailed estate, with consent of the heir in possession, to grant provisions in favour of his wife and his lawful child or children who shall not succeed to the entailed estate, to the same extent, in the same manner, and subject to the same conditions to, in, or under which it is competent for the heir in possession to grant provisions under the Aberdeen Act, or under the entail, but only postponed to and after deducting existing provisions by an heir in possession. The following form of a Contract of Marriage where such provisions for his wife and children are made by an heir-apparent with consent of his father (*the heir in possession*) may be of use:—

IT IS MATRIMONIALY CONTRACTED and AGREED between the parties following—viz., A (*designation*), eldest son of C (*designation*), with consent of the said C, *on the one part*, and B (*designation*), *on the other part*—THAT IS TO SAY, &c.: IN CONTEMPLATION OF which marriage the said A, being heir-apparent to the entailed lands and estate of X, in the county of Y, of which lands and estate the said C is now the heir of entail in possession, with the special advice and consent of the said C, and the said C for himself, his own right and interest, and they both with one consent, in virtue of the Entail Provisions Act, 1824, and of the Entail Amendment (Scotland) Act, 1868, do hereby PROVIDE and DISPONE to the said B in liferent (*here will follow the several clauses of the contract as in the previous examples*,

*mutatis mutandis; the obligations for payment of children's provisions will be undertaken by A and C in their respective characters before-mentioned; the provisions will be granted to the children of A other than the heir who may be entitled to succeed at his death to the said entailed lands and estates, or who shall then be the heir-apparent to the said lands and estate; and whenever the "said Act of Parliament" occurs, the "said two Acts of Parliament or either of them" will be substituted. Some minor alterations which will readily be perceived will also be necessary.)*

#### VARIATIONS IN THE DESTINATION OF THE ESTATE CONTAINED IN THE DISPOSITIVE CLAUSE.

The destination must, of course, be regulated wholly by the intention of parties, and though the example given in Form 10 contains a very common form of destination, it is not universal, and will be modified according to arrangement in each case.

Professor Montgomery Bell recommends in his "Lectures on Conveyancing" (3rd Ed., p. 876) that where the settlement is to take effect on the husband's death (as in Form 10), the destination be taken to the husband himself, and to the sons of the marriage in their order of seniority, and the heirs whomsoever of their bodies respectively; whom failing, to the sons to be born to the husband in any subsequent marriage, in their order of seniority, and the heirs whomsoever of their bodies respectively; whom failing, to the daughters of the intended and of any subsequent marriage, in their order of seniority, and the heirs whomsoever of their bodies respectively; whom failing, to the husband's own heirs or assignees whomsoever; and to add that the eldest daughter or heir-female is always to succeed without division and to exclude heirs-portioners.

He considers this destination, which provides the estate in case of the failure of the eldest son without male issue, to that son's daughter, to be more natural and probably more usual than the destination before given, by which it goes to his brother.

The destination is also sometimes—

To himself (A) and the heirs-male of the marriage hereby contracted, and the heirs whomsoever of their bodies, whom failing, to the heirs-male of the body of the said A by any subsequent marriage, and the heirs whomsoever of their bodies, whom failing, to the said A, his own nearest heirs and assignees whomsoever.

Or it may be made to the heirs of the body of the husband (without limitation to males), whom failing, to heirs-substitute named, and the heirs of their bodies in their order.

It seems advisable, however, in all settlements of estates to insert a clause excluding heirs-portioners.

Where the estate is of small value it is sometimes destined to the spouses in conjunct fee and liferent, and to the heirs of the marriage in fee.

The effect of the destination to "the heirs," or to "heirs-male of the marriage," is to carry the estate to the eldest son, and the father cannot disappoint him of the succession by gratuitous deed. Nay, the father was found not to have this power even where the eldest son was bankrupt; and the same rule would probably be followed where the heir is insane. If, therefore, it is intended to provide against these and other contingencies, we would recommend to conveyancers to make some such clause as the following a part of every contract of marriage. It may be inserted immediately after the description of lands in the dispositive clause, and before the reservation of the power to entail the estate:—

Clause  
reserving  
power to  
alter  
destination  
of landed  
estate.

RESERVING ALWAYS to the said A full power to alter the destination before written, and the order of succession thereby prescribed, by calling to the succession of the said lands the lawful issue of the heir of the said intended marriage (whether such heir shall be a son or a daughter) in preference to such heir; or by calling any younger son or sons, or the lawful issue of such younger son or sons of the said marriage, in preference to the eldest son of the said marriage or his issue; or in case there shall be no sons of the said marriage, or only one son, by calling any daughter or daughters, or the lawful issue of any daughter or daughters of said marriage, in preference to the only son or eldest daughter of the said marriage, or his or her issue: But the said A shall not be entitled to call any person or persons other than a child or children, or lawful issue of a child or children of the said marriage, in preference to any child or issue of a child of the said marriage.

It will, however, be kept in view that powers so wide as those contained in this latter form, which practically would enable the father to elude the destination in the marriage contract, would require to be exercised with the greatest caution.

The law is now fixed that the father may be discharged of his obligations under the contract by the presumptive heir of the marriage when of full age; and the renunciation is effectual notwithstanding the predecease of such heir, so that the party who happens to be the heir of the marriage when the succession opens by the death of the father may in this way be disappointed of the estate. It deserves consideration whether a clause ought not to be introduced to prevent the father from so counteracting the evident purpose of the contract. And it does not appear that this would be attended with any serious inconvenience.

The restrictive clause, which may be inserted immediately after the dispositive clause, and before the clauses reserving power of altering the destination, or of entailing, may be in the following or similar terms:—

DECLARING ALWAYS that the term "heirs of the marriage" (or Clausedefining "heir of marriage." "heirs-male of the marriage," or "heirs whomsoever of the marriage"), as used in the destination before written, shall be held to signify the person born or descended of the said marriage who shall be entitled to succeed to the said lands and estate upon the death of the said A, under the destination before written or any new or altered destination which may be made by the said A in virtue of the powers after written, and no other.

Such a clause would probably have the effect intended. But any such provision may perhaps be objected to as an attempt to supersede the right conferred on the heir under a contract of marriage, by leaving undetermined till the father's death a right which must commence with the existence of the first child of the marriage. The subject is involved in difficulties arising from the peculiar nature of the rights with which the law invests the heir of a marriage.

It may be desired, where the parties are possessed of no further property than what is settled under the marriage contract, to reserve in this deed to one or both spouses a power of granting reasonable provisions in favour of the spouse and children of a subsequent marriage, should the surviving spouse enter into such. This appears especially advisable in the case of a wife, who generally has no power to increase her estate, and whose whole means are very frequently made over under her first contract. Although the provisions by the husband are more commonly (as in the preceding examples) of a definite amount which may be presumed not to exhaust his estate, it may likewise be desired to retain this power on his part.

If such a reservation to both spouses be desired, we would recommend that the provisions by a spouse who may marry again should always bear a proportion to the number of the children born or to be born of the subsequent marriage or marriages, and in no case exceed one-half of his or her estate presently settled. We give a form of reservation which may easily be adapted to the circumstances of the case : (a)—

RESERVING ALWAYS to the survivor of the said A and B, in the event of his or her entering into a subsequent marriage after the dissolution of the marriage hereby contracted, full power by any writing under his or her hand to make reasonable provision for such subsequent spouse and the child or children to be born of such subsequent marriage ; WHICH provisions in the case of a spouse or spouses shall not exceed the liferent of one-half of the means and estate now contributed by the party to this Contract who shall enter into such subsequent marriage ; and in the case of a child or children shall not bear a greater proportion to the means and estate so contributed,

Reservation of power to provide for future marriage.

(a) See also similar provisions in marriage-contracts in which a trust is created, *post*, p. 712.

than the number of children of such subsequent marriage or marriages, who being sons shall attain majority, or being daughters shall attain majority or be married, shall bear to the whole children of such spouse, who being sons shall attain majority, or being daughters shall attain majority or be married as aforesaid, so long as such proportion does not exceed one-half of such means and estate: AND DECLARING, as it is hereby specially PROVIDED and DECLARED, that in no case shall the spouses or children of such subsequent marriage or marriages receive more than the liferent and fee of one-half of said means and estate.

#### VARIATIONS IN THE PROVISIONS TO THE WIFE.

In place of an annuity to the wife payable out of the estate, a certain portion of the lands is sometimes set aside to be liferented by her, and on that account gets the name of *locality lands*. This is especially the case where the estate is entailed. In many existing entails there is a clause debarring all annuities of money to wives, and allowing jointures to be granted by way of locality only; and although this form of provision is highly inconvenient and inexpedient, it may in certain exceptional cases be preferred by the parties to granting a provision under the Aberdeen Act. We therefore give a form upon which the conveyancer will at once be able to make changes suitable to the circumstances of any case:—

Wife liferented in locality lands.

IT IS MATRIMONIALY CONTRACTED, &c.: IN CONTEMPLATION OF which marriage, &c., the said A hereby PROVIDES and DISPONES to and in favour of the said B in liferent, during all the days of her lifetime after his decease, in case she shall survive him, ALL AND WHOLE (*here describe or validly refer to the locality lands, and refer to real burdens, conditions, &c., already constituted, if any*); but always with and under the burden of a proportional part, corresponding to the lands and others above described, of all feu and teind duties, cess, minister's stipend, and other public and parochial or other burdens whatsoever, imposed or to be imposed upon the lands, and others of which those hereby disposed form part: AND RESERVING ALWAYS to the said A, notwithstanding these presents, full power to grant leases of the lands and others above disposed, at any time of his life, for periods not exceeding nineteen years, at fair rents, and without any grassum, fine, or consideration other than the yearly rent paid in respect of such lease; WITH ENTRY as at the date of his the said A's decease: AND the said A assigns the writs, but only in so far as necessary to support the right hereby

granted: AND the said A assigns to the said B during all the days of her life after his decease, in case she shall survive him, the rents, maills, and duties of the said lands and others, with full power to her to possess the same, set tacks thereof to tenants for her own lifetime, or for any period not exceeding nineteen years, at fair rents, but without taking any grassum, fine, or consideration other than the yearly rent, and to do every other thing which by the law of Scotland a liferenter in like case is entitled to do: AND the said A grants warrandice, &c.

In this case the estate will be disposed to the heir under the burden of the wife's liferent.

It will no doubt be the wish of the parties that these locality provisions should be brought as nearly as possible to a fixed annuity, consistently with the terms of the entail. Different plans have been adopted to accomplish this purpose. By some a clause has been introduced making the wife accountable to the heir of tailzie for the surplus of the rents of locality lands above a certain fixed annuity. But as this involves a disagreeable accounting between the widow and the heir, it does not seem desirable. To accomplish the object in view, the following clause, which has been used in recent practice, may be added—

BUT DECLARING ALWAYS that the said B shall be BOUND and OBLIGED, if required, to grant a lease of her said locality lands to the heir of entail in possession of the estate for the time, and his successors in the said estate, and that for the period of her own lifetime, for payment of the yearly rent of £                      stg. at two terms of the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment at the first of these terms which shall happen after the date of the said lease: AND which lease shall contain this express condition, that in case the heir of entail in possession shall fail in the punctual payment of any one term's rent, it shall be in the power of the said B, at any time before an offer of payment of such rent, to recur to her right of locality, and to enter into possession of the lands therein contained, as if the said lease had never been granted.

Obligation  
to grant  
lease of  
locality  
lands.

Or power may be given to the heir to redeem the locality lands on payment to the widow of a fixed annual sum.

If it is intended to give the wife the liferent of lands to a certain amount of yearly rental, and there is no opportunity of ascertaining the rents of the lands conveyed in the contract, the following clause may be inserted after assignation of the rents:—

Wife's life-  
rent of lands  
whose value  
not ascer-  
tained.

AND WHEREAS the said liferent lands are accepted by the said B without any knowledge as to the rental thereof, or annual burdens or deductions affecting the same, and it formed part of the arrangements under which these presents are granted that the lands to be provided by the said A to the said B for her liferent use after his death, as before-mentioned, should be of the yearly rent of at least £ stg. after payment of all burdens and deductions: THEREFORE it is hereby PROVIDED and DECLARED that in case it shall be found that the free rental of the lands hereinbefore disposed to the said B, for her liferent use foresaid, does not amount to the said sum of £ stg., it shall be in the option of the said B, at any time within one year from the date hereof, to choose in lieu of the locality lands hereinbefore provided to her, or such part of said lands, if any, as she shall not wish to retain, any other part or parts of the estate of the said A (*any restrictions to be imposed as to the situation of the lands which the wife shall be entitled to select will be inserted here*), of which the free yearly rental shall not, with the rental of the locality lands hereinbefore provided, or such part of these, if any, as she shall elect to retain, exceed in all the said sum of £ stg.: AND the said A BINDS and OBLIGES himself, and his successors in the said entailed estates, in the event of such option being declared by the said B as aforesaid, to grant a liferent conveyance in her favour of such other part or parts of the said entailed estates as may be chosen by her as aforesaid in the terms and to the effect above mentioned, the said B always renouncing her liferent of the locality lands hereinbefore disposed, or so much thereof as she may not wish to retain—the intention of the parties hereto being that the said B shall be provided in the liferent of lands of which the free yearly rental shall amount to, but not exceed, the said sum of £ stg.

Where it forms part of the arrangement between the parties that the wife, in addition to an annuity, shall in the event of her survivance be provided with a residence, it is most convenient that such a stipulation should be given effect to by an obligation on the part of the husband for the payment of a certain yearly sum in name of house rent; and in modern practice this is the form usually adopted. The provisions, however, may take the shape of a conveyance of the husband's residence to the wife in liferent should she survive him, but reserving full power to him, with her consent, to dispose of the house conveyed, and containing, in the event of such power of disposal being exercised, an obligation for payment either of a yearly sum in name of house rent, or an obligation to provide the liferent of some other house of an equivalent annual value. The following is an example of such a clause:—

AND FURTHER, the said A hereby DISPONES to the said B in life-rent, for her life-rent use alienably in case she shall survive him, but so long only as she shall remain his widow, ALL AND WHOLE the mansion-house of Jointure house, or provision for house rent., and offices and gardens therewith connected (or ALL AND WHOLE the dwelling-house and others presently occupied by him at house, or provision for house rent., and which are described in the titles thereof as follows—viz., or otherwise, as the case may be, here describe or validly refer to the subjects conveyed); PROVIDING and DECLARING, nevertheless, that it shall be in the power of the said A, with consent of the said B, to burden or affect with debt the said mansion-house and others (or, as the case may be), or to sell and dispoise the same, the said A in such event or events being bound, as he hereby BINDS himself and his foresaids, to make payment to the said B, from and after the first term of Whitsunday or Martinmas that shall happen next after his death, of the sum of £ stg. yearly in name of house rent during her survivance and widowhood as aforesaid, or otherwise to PROVIDE and CONVEY to her in life-rent as aforesaid, and so long as she shall remain his widow, such other suitable or convenient mansion or dwelling-house as may be equal in yearly value to at least the foresaid sum of £ stg. provided to her in name of house rent.

Where there is no house or sum specially provided in lieu of house rent, this fact will be kept in view in fixing the amount of the wife's annuity.

#### VARIATIONS IN THE PROVISIONS TO YOUNGER CHILDREN.

In a postnuptial contract the provisions to younger children are usually taken to the children of the marriage "born or to be born."

The clause in the example given on p. 674 *et seq.* is suited only to the case where a single sum is provided in general terms to the child or children of the marriage. But it may frequently be desired to provide a greater or less sum, proportionate to the number of the younger children, or to enlarge the provisions to daughters, when from the failure of heirs-male the estate goes out of the family to the heirs-male of the husband by a subsequent marriage. The following example provides for each of these cases:—

AND FURTHER, in case there shall be more than one child of the said intended marriage, the said A BINDS and OBLIGES himself, and his heirs, successors, and representatives whomsoever, to pay to Sliding scale of younger children's provisions.

the children other than the heir who shall at his death be entitled to succeed to the said lands and estate, the following sums of money in the events respectively after specified—viz., in case there shall be only one such other child alive at the term of payment after specified, the sum of £                      stg., if two such children the sum of £                      stg., and if three or more such other children the sum of £                      stg.—to be increased, as the said provision is hereby increased, in case the person who shall be entitled to succeed to the said lands and estate at the death of the said A shall not be an heir of the marriage hereby contracted, to the sums following—viz., in case there shall be only one child of the said intended marriage, who shall not succeed to said lands and estate, the sum of £                      stg., if two such children the sum of £                      stg., and if three or more such children the sum of £                      stg., and the said provisions shall be payable at the first term of Whitsunday or Martinmas after the death of the said A, with a fifth part more of liquidate penalty in case of failure in punctual payment, and interest at the rate of £5 per cent. per annum from the death of the said A till payment: DECLARING ALWAYS that in computing the number of children by which the total amount of the above provision is to be fixed, no child predeceasing the said A shall be included in the computation unless such child shall have left lawful issue surviving the said A, in which case such child shall be included in the computation, and the lawful issue of such child shall be held as representing their said deceased parent, and shall be entitled to such share, both original and accreting, of the said provision as would have fallen to their parent if he or she had survived; AND the lawful issue (other than the heir entitled to succeed to said estate) of a predeceasing child shall be entitled to the like share, although such child, in the event of survivance, would have been entitled to succeed to said lands and estate if he or she shall have died without having acquired a vested right thereto; AND the said provision (whatever the same may amount to) shall be divisible among the children and lawful issue of children entitled to participate therein, in such shares and proportions as the said A shall appoint by any writing under his hand, and failing such appointment, then equally between or among such children and lawful issue of deceased children *per stirpes*, the lawful issue of any deceased child entitled to participate as hereinbefore

written, being in the division always reckoned as in place of and representing their parent, and entitled to his or her share accordingly.

It may perhaps in some cases be considered desirable that children's provisions should not vest immediately on the death of their father; and if it is intended to postpone the period of vesting, some such clause as the following may be introduced, subject to the necessary modifications in each case :—

AND DECLARING FURTHER that no child, nor issue of a prede-  
 ceasing child, shall acquire a vested right to said provision, or any Vesting of provisions.  
 part or share thereof, until the death of the said A, and until, in the case of sons, they shall attain majority, and, in the case of daughters, until they shall attain majority, or be married, whichever of these events shall first happen, but in the event of any child entitled to participate in the said provisions predeceasing the said A, or dying before attaining majority and leaving lawful issue, such issue shall acquire a vested right to their parents' share on the death of the said A, or on the death of their parent as aforesaid, whichever of these events shall happen last: AND DECLARING FURTHER that the right and interest in the said provision, or share thereof, of any child who shall die before the period of vesting without leaving lawful issue, shall fall and accresce to the then surviving child or children, and the lawful issue of any deceased child or children, under the same conditions in all respects as are applicable to the original shares.

The conveyancer should be well aware of the legal effect of the terms usually employed in the clause providing for the younger children. Drawn up in the terms given in the above examples, the children have no *jus crediti* vested in them whereby to compete with onerous creditors of the father. It is only in questions with the father's representatives or his gratuitous disponees that their right rises above a mere *spes successionis*, the provisions, as will be observed, being made payable only after the death of the father. When, however, they are made payable at a term which may happen during the lifetime of the father, as at the marriage or majority of the children, or when the sum provided is made to bear interest from such a term, then the children become proper creditors, and on his insolvency may make a contingent claim against his estate.

The mode, however, by which provisions to children may be most effectually secured is by a conveyance to trustees for their behoof. Examples of this are given on p. 697, and following pages.

## VARIATIONS IN ASSIGNATION AND CONVEYANCE BY WIFE.

It is of importance, especially where the husband is in trade, that the wife's estate should be so settled upon herself or the heirs of the marriage as to prevent the possibility of its being attached by the husband's creditors.

The safest, and generally the best, way of effecting this will be by a conveyance by the lady, with consent of her guardians, and intended husband where necessary, of the whole estate or fortune belonging to her, or to be acquired by her during the marriage, to trustees, who will be directed to hold the same in trust for such purposes as may be arranged—in the usual case to pay the free income to the wife during her life for her alimentary liferent use allennarly, and exclusive of the right of administration of her husband, and after her death to the husband, also for his alimentary liferent use allennarly during his life in case he shall survive her; with a declaration that the income thus provided, whether falling to the wife or to the surviving husband, shall not be assignable by them or either of them, that neither shall be entitled to anticipate the same, and that it shall not be liable to the diligence of the creditors of either, and a direction after the death of the longest liver of the spouses to pay or make over the capital to the children of the marriage on their attaining majority, or at such other period as may be arranged.

In all cases where either of the spouses is divested of his or her entire estate by a conveyance to trustees, it will be proper to reserve to such spouse power of making provision to a limited extent out of the trust-estate for the husband (or wife) and children of any subsequent marriage. The form of such a reserved power is given in the Form on page 689.

The wife's means and estate may be kept safe from her husband and his creditors (but probably not from the consequences of her own voluntary acts) without the machinery of a trust, by a simple renunciation on the part of the husband of his right of administration in and over the same, and a declaration that the wife shall have power to dispose thereof, *inter vivos* or *mortis causa*, without consent of her husband, and that, failing such disposal by her, such means and estate shall fall and belong at her death to the person or persons who would have been entitled to succeed thereto upon her death if she had died unmarried and intestate and domiciled in Scotland. Such an arrangement will have the effect of leaving the lady absolute control of her own fortune as if she were unmarried. We give below examples of a renunciation of the husband's rights, which may be inserted after the assignation and conveyance by the wife, or, where she is possessed of heritable estate, after the provisions in favour of her promised husband:—

Renuncia-  
tion by  
husband of  
marital  
rights.

AND it is hereby further specially provided and declared that all heritable or real estate (including any entailed estate or estates to which the said B may become entitled) and moveable or personal means and estate of whatever description presently belonging to the said B, or to which she shall succeed or acquire right during the subsistence of the said intended marriage, and the rents, income, and

annual proceeds thereof, shall be held and received by her exclusive of the right of administration of the said A, and that the same shall not be affectable by his debts or deeds, or the diligence of his creditors, which right of administration the said A hereby expressly renounces: DECLARING FURTHER, that in the event of the death of the said B without having disposed of her said means and estate—which she shall have full power to do, whether *inter vivos* or *mortis causa*—the same shall fall and belong to her own nearest heirs and representatives whomsoever as if she had died unmarried and intestate and domiciled in Scotland, and the said A, in respect of the provisions hereby conceived in his favour by the said B hereby renounces all rights of succession competent to him in her estate, whether conferred upon him by common law or in virtue of the Married Women's Property (Scotland) Act, 1881.

## SECTION II

### ANTENUPTIAL CONTRACTS OF MARRIAGE IN WHICH THE PROVISIONS TO THE WIFE AND CHILDREN ARE SECURED BY MEANS OF A CONVEYANCE TO TRUSTEES

The intervention of trustees is the most effectual and only satisfactory method of securing the provisions to the wife and children, and it is accordingly very generally adopted in practice. Indeed, it deserves consideration whether it ought not to be adopted in every case where the estate or fortune is settled in the marriage-contract by the wife or her relatives, and where nothing more than a life interest is intended to be conferred upon the husband.

#### 1. Antenuptial Contract of Marriage in which the Provisions by the Husband are secured by a Conveyance to Trustees, and the Wife conveys her whole Estate to them.

IT IS CONTRACTED, AGREED, and MATRIMONIALY ENDED between A, on the one part, and B, on the other part, in manner following: THAT IS TO SAY, the said A and B have accepted and hereby accept each other for lawful spouses, and promise to solemnise their marriage with all convenient speed; in contemplation of which marriage, and in consideration of the provisions in his favour hereinafter mentioned, the said A hereby GIVES, ASSIGNS, and

Inductive  
clause.

HUSBAND'S  
OBLIGA-  
TIONS.

(1) Provision  
of furniture.

DISPONES to the said B, as her absolute property, if she survive him, the whole household furniture, including plate, crystal, bed and table linen, books, pictures, wines, and liquors, and generally everything useful or ornamental which shall be in or about his house at the time of his death (PROVIDING ALWAYS that the said A shall have power to dispose by will, if he sees fit, of all books and other articles relating to his profession), or in lieu of the said provision, or in the option of the said B, should she survive him, the said A BINDS and OBLIGES himself, and his heirs, executors, administrators, and successors whomsoever, renouncing the benefit of discussing them in their order, to make payment to her at the first term of Whitsunday or Martinmas after his death of the sum of £           sterling, and DECLARING that it shall be in the power of the said A, or of his fore-saids, to redeem from the said B the household furniture and others above conveyed, by making payment to her, within three months after the death of the said A, of the sum of £           sterling for the

(2) Sum for  
mourning  
and interim  
aliment.

same: AND FURTHER, the said A BINDS and OBLIGES himself and his fore-saids to make payment to the said B, within three months after his death, if she survive him, of the sum of £           sterling, as an allowance for her mournings, with interest at the rate of 5 per centum per annum from the said term of payment thereof, and also of a sum for aliment at the rate of £           sterling per annum, for the period between his death and the first term of Whitsunday or Martinmas thereafter when the liferent hereinafter provided to her commences:

(3) Hus-  
band's obli-  
gation to  
pay a sum to  
the trustees.

AND FURTHER, the said A BINDS and OBLIGES himself and his fore-saids to pay to L, M, and N, and such other person or persons as shall be assumed to act in the trust hereby created, and the acceptors or acceptor, survivors or survivor of them, as trustees for the purposes after-mentioned (the said trustees being throughout these presents denominated "the trustees"), and to their assignees, the sum of £           sterling, at the first term of Whitsunday or Martinmas which shall happen after the death of the said A, or at any earlier period at which the said A may choose to make payment of the same, with a fifth part more of liquidate penalty in case of failure and interest of the said sum at the rate of £5 per centum per annum from and after the said term till payment thereof; and in security of the whole personal obligations before written, the said A ASSIGNS, TRANSFERS, DISPONES, and CONVEYS to and in favour of the said L, M, and N, as trustees foresaid and their fore-

said—(First), A certificate or policy of assurance effected by the said A on his own life with No. for the sum of £ sterling, and bearing date the day of or of whatever other date or dates, tenor or contents, the said certificate or policy of assurance may be: together with the said sums due under the before-mentioned certificate or policy of assurance, and all vested additions or bonuses which may have been declared or may have accrued thereon, or which may be declared or may accrue thereon, and the whole claims, advantages, and benefits which may arise from the said certificate or policy of assurance, and all the said A's right, title, and interest therein; with full power to the trustees and their foresaids to UPLIFT, RECEIVE, and DISCHARGE or ASSIGN the sums becoming due under the said certificate or policy of assurance; and also to sell and surrender the same, or the bonus additions thereon, and to grant all writings necessary and proper in the premises; and (Second), shares of £ sterling each (the total present value of which is £ sterling) of and in the undertaking called , which shares the said A certifies to be fully paid-up and free from any liability for further calls, and he obliges himself when required, if not already done prior to the date hereof, to execute and deliver all transfers, deeds, and writings requisite for validly vesting the trustees in his full right and place in the premises; DECLARING that in so far as such transfers, deeds, and writings may be *ex facie* absolute and not merely in security and in trust, the same shall notwithstanding such absolute character be held by the trustees in trust for the purposes hereinafter expressed; AND FURTHER DECLARING, that the trustees shall not be at liberty to sell or dispose of the said shares, or any other stocks or shares which may represent the same for the time, without the written consent of the said A, unless in the event of his being temporarily or permanently in such a state of health as to render it in the opinion of the trustees inexpedient that he should be applied to for such consent, in which case the trustees shall be at liberty to sell or dispose of the said shares or any other stocks or shares which may represent the same for the time according to the best of their discretion, without the consent of the said A; AND DECLARING FURTHER that it shall be in the power of the said A, if he see fit at any time, to redeem the said shares or any of them on making payment to the trustees of the sum of £ sterling, and the trustees shall be bound, on

(4) Conveyance in security of husband's obligation.  
(a) Policy of insurance.

(b) Company Shares.

such payment being made to them, to reconvey to the said A the whole of the said shares; and the said A BINDS and OBLIGES himself to observe the whole conditions of the certificate or policy of assurance before conveyed, and to keep the said certificate or policy of assurance in force, and for that purpose to make timeous payment of the future annual or half-yearly premiums or contributions payable under the said certificate or policy of assurance, and of any extra or additional premiums or contributions which may be required for keeping the said certificate or policy of assurance in force, and to exhibit receipts therefor to the trustees and their foresaids regularly in each year within eight days after the same respectively fall due: DECLARING that the trustees and their foresaids shall have right, but shall not be bound, to advance the said annual or half-yearly premiums or contributions, and additional premiums or contributions themselves, and to charge the said A with the same: WHICH sum of £           sterling, or the securities representing the same, and the said certificate or policy of assurance, and the said shares held in security thereof, shall be held by the said trustees in trust for the following purposes, viz.—(*First*) The trustees shall apply the free yearly income, after payment of the expenses of the trust, towards payment of the annual premiums or contributions of assurance necessary to keep the foresaid certificate or policy of assurance in full force. (*Second*) The trustees shall pay to the said A, during his life and solvency, the balance, if any, of the said free yearly income, or in the option of the said A, shall allow him to receive payment of the same himself, direct from the company or companies, or parties from whom the same is payable, but DECLARING that in the event of the insolvency or bankruptcy of the said A, the trustees shall pay the said balance from time to time, in such amount or amounts as they may deem suitable, to the said B, for her sole and separate use and aliment, exclusive of the right of administration of the said A: AND DECLARING FURTHER, that in the event of the said B dying after the said A shall have become insolvent or bankrupt, or of his affairs being put into liquidation, or other action vesting the same in his creditors, the trustees shall retain the said balance of the free yearly income, and shall apply the same for the maintenance and education of the child or children of the said intended marriage, if they shall not have attained the age of twenty-one years, and shall

(5) Purposes  
of husband's  
trust.

(1) Pay-  
ment of  
premiums.

(2) Pay-  
ment of  
income to  
husband.

Provision  
for hus-  
band's in-  
solvency.

divide the same among them if they shall have attained that age, or being daughters shall be married, as if the said A were then dead. (*Third*) After the death of the said A, if the said B shall survive, the trustees shall pay the whole income arising from the said £           sterling, or the stocks, shares, or other securities representing the same, to the said B for her sole and separate use and aliment. (*Fourth*) After the decease of the survivor of the said A and B the trustees shall hold the said sum of £           sterling, or the stocks, shares, or other securities representing the same for the time, in trust for behoof of the child or children of the said intended marriage who shall be then alive, subject to the provisions, conditions, and declarations hereinafter contained; (*Fifth*) In the event of all the children of the marriage, and their issue, predeceasing the period of payment after-mentioned, or of there being no issue of the marriage, the trustees shall, on the decease of the said B, reconvey to the said A, if he be then alive, the said certificate or policy of assurance, and the said shares hereinbefore transferred to them, or other stocks, shares, or securities representing the same, or other the said sum of £           sterling or any part thereof, or if the said A shall be then dead, the trustees shall convey the same to such person or persons as he may appoint by any testamentary writing executed by him, and failing such appointment, then to the person or persons who would have been entitled to the same had the said A died intestate and unmarried; AND it is hereby DECLARED that the said provisions in favour of the child or children of the said intended marriage shall, subject to the provisions and declarations hereinafter contained, be payable to them after the death of the survivor of the said A and B as aforesaid, in the case of sons on their respectively attaining the age of twenty-one years complete, and in the case of daughters on their respectively attaining that age, or being married, whichever of these events shall first happen; and until the said provisions become payable to them, the said A OBLIGES himself and his foresaids to educate, maintain, and aliment the said child or children in a manner suitable to their position in life: FOR WHICH CAUSES, AND ON THE OTHER PART, the said B hereby DISPONES and CONVEYS to and in favour of the said L, M, and N, as trustees foresaid, and their foressaids, for behoof of herself and the said A, and the child or children of the said intended marriage, or of any other

(3) Payment of income to wife as survivor.

(4) Capital to children alive at death of survivor of the parents.

WIFE'S OBLIGATIONS.

(1) Conveyance of estate and acquitments.

marriage into which she may enter, in the manner and for the purposes and under the provisions and declarations hereinafter contained, ALL AND SUNDRY the whole means and estate, heritable and moveable, now belonging, or which shall belong to her during the subsistence of the marriage (but under the exception of the sum of £                      sterling deposited in her name in the Bank, and of any moneys in her current bank account, current income, and any legacies or other sums to which she may acquire right during the marriage, not exceeding £                      sterling each in amount, all which shall be at her own disposal exclusive of her intended husband's right of administration, and excepting also her provisions as before specified); and particularly, without prejudice to the foresaid generality, the said B hereby ASSIGNS and CONVEYS to the said trustees and their foresaids—*(First)* A certain mortgage No.                      made by the                      Company to her, bearing date the                      day of                      , for securing the sum of £                      sterling, and interest thereon at the rate of                      per cent. per annum, and all her right, title, and interest in and to the money thereby secured, and in and to the tolls, money, and property thereby assigned; *(Second)*                      stock of and in the undertaking called the                      Company, to hold unto the said transferees, their executors, administrators, and assigns, the said stock above conveyed, subject to the conditions on which the said B held the same immediately before the execution hereof: AND the said B OBLIGES herself when required, if not already done prior to the date hereof, to execute and deliver all such transfers, deeds, and writings as may be requisite or necessary for validly vesting the trustees in her full right and place thereof, according to the rules and forms of the said company; DECLARING that in so far as such transfers, deeds, and writings may be *ex facie* thereof absolute and not simply in trust, the same shall, notwithstanding such absolute character, be held by the trustees in trust for the purposes hereinafter expressed: And *(Lastly)*, her the said B's whole right and interest under and in virtue of the trust-disposition and settlement of                      dated                      and recorded in the books of Council and Session                      , or of whatever other date or dates the same may be, together with the whole titles, writs, vouchers, evidents, and instructions of her said estate and effects hereby generally or specially conveyed; AND the said B BINDS and OBLIGES herself, and her heirs and successors, to

and particularly of (a) mortgage.

(b) Company stock.

(c) Rights under a testamentary settlement.

grant all necessary deeds and writings in favour of the trustees for implementing the foresaid conveyance in their favour: BUT DECLARING that these presents are granted by the said B in trust only, and for the ends, uses, and purposes after-mentioned—viz.: *(First)* For payment to the said B herself alone during her life as to her separate estate, exclusive of the right of administration of the said A, and as an alimentary provision, of the free yearly proceeds, after deducting all expenses incurred by the trustees in relation to the same, of the said money, estate, effects, and property before generally or specially conveyed by her. *(Second)* In the event of the said B predeceasing the said A, the trustees shall, after her death, pay the free yearly income, interest, and revenue of the said trust-estate to the said A during all the days of his life, as an alimentary provision not attachable or affectable by his debts or deeds. *(Third)* At the death of the longest liver of the said A and the said B, the trustees shall hold or apply the fee or capital of the said trust-estate or proceeds thereof for behoof of the child or children of the said intended marriage then alive, payable in the case of sons on their respectively attaining the age of twenty-one years complete, and in the case of daughters on their respectively attaining that age or being married, whichever of these events shall first happen, but subject always to the powers of division and other powers hereinafter reserved. *(Fourth)* If there shall be no child or child's issue alive at the death of the said B, the whole of the said fee or capital conveyed by her shall, subject to the said liferent of the said A, be at her disposal, and shall belong to such persons, one or more, as she may have appointed by any will or other writing under her hand, and failing such will or writing, the same shall belong to and be payable after the expiry of the liferent of the said A, should he survive the said B as aforesaid, to such person or persons as would have become entitled to her moveable estate had she died intestate and unmarried. *(Fifth)* In the event of the said B being the survivor of the spouses, and of there being no issue of the marriage, or of such issue predeceasing the term of payment, then the trustees on her requisition shall MAKE OVER to her the whole property, estate, and effects hereinbefore conveyed and assigned by her: AND it is hereby DECLARED that the said A and B shall have full power, at any time during their joint lives, by any writing under their joint hands, to divide and apportion the foresaid provisions and fee, and capital settled and

(2) Purposes of wife's trust.

(1) Payment of income to wife.

(2) Income to husband on survivorship.

(3) Capital to children alive at death of the survivor of the parents.

(4) If no children alive at wife's death, capital to be at her disposal.

(5) If wife survive and no children, or children predecease, capital to her.

Power of apportionment.

secured by them respectively among the children if more than one, and to appoint that the same shall vest in, belong, and be payable to them in such proportions, subject to such conditions, and at such times as the said A and B may think proper; AND ALSO to restrict the right of any one or more of the children, or, in the case of there being only one child, to restrict the right of such one child, to a life-rent, or to a strictly alimentary life-rent of the provision falling to such child or children; DECLARING that in the event of such powers not being exercised by the spouses during the marriage, the surviving spouse shall have right to exercise similar powers in regard to said provisions and the said sums of money and other property hereby assigned to the trustees by the parties respectively; but such surviving spouse shall not have right to revoke or alter any previous exercise of the said powers by the spouses jointly, unless the predeceasing spouse shall in the deed or writing exercising such powers, or by a writing under his or her hand having a special reference thereto expressly authorise the survivor to revoke or alter the same; AND FURTHER DECLARING, that if all or any of the children shall die leaving lawful issue before his, her, or their share of the said trust moneys shall have vested, then and in that event such issue shall, unless otherwise provided by the spouses or survivor in exercise of the said reserved power, come in place of their deceasing parent, and be entitled equally *per stirpes* to the shares, both original and accreting, which would have fallen to such parents if the parents had survived the term of vesting: DECLARING, moreover, that, failing the exercise of the said reserved powers, the said trust moneys shall belong to and be divided among the children if more than one, in equal portions, share and share alike, and at the terms respectively before specified; and until their shares of the said trust moneys shall become payable the trustees shall, after the death of the survivor of the said spouses, be bound to pay the yearly interest or proceeds thereof, or such portions thereof as may be necessary for their suitable maintenance and education, to the tutors or curators, or other guardian of the said child or children, and failing such tutors or curators, then according to the trustees' own discretion towards the maintenance and education of such child or children; WITH power to the trustees, if they think proper, before the said term of payment to apply the whole, or such portion as they may think proper, of each child's presumptive share of the said trust funds in making advances to them, or upon

Destination over to issue of predeceasing children.

Powers to pay interest and advance capital.

their account, for fitting them out or advancing them in the world: BUT DECLARING that during the survivance of either of the said A and B no such advance or advances shall be made without his or her written consent; WHICH provisions before written in favour of the said B she hereby accepts in full satisfaction of all terce of lands, <sup>Exclusion of legal rights of spouses.</sup> half or third of moveables, dower, and every other claim and provision whatever competent to her by the decease of the said A in case she shall survive him, and in like manner the said A hereby accepts of the provisions before written in his favour in full satisfaction of all courtesy, legal share of moveables, and every other claim and provision whatever competent to him by the decease of the said B in case he shall survive her; AND it is also hereby DECLARED <sup>Exclusion of children's legal rights.</sup> that the provisions before written in favour of the children, one or more, of the said intended marriage are in full satisfaction to them of all legitim, executry, and every other claim or provision whatever competent to them through the decease of their said father and mother: DECLARING that the trustees under this contract shall have <sup>Powers of trustees.</sup> full and unlimited power of sale either by public roup or private bargain, as also of compromise or submission, and of investing or reinvesting the whole of the trust funds in their own names on heritable security, or in the purchase of lands or house property, feu-duties, or ground-annuals in Great Britain, or in the Parliamentary stock or funds of Great Britain, Ireland, or India, or stocks, funds, or securities of the Government of India, or of any British colony or dependency, or in the stocks or funds of any foreign Government guaranteed by the Government of Great Britain, or in the stock or shares of the Bank of England, or in debentures or debenture stock or preference or guaranteed stocks or shares of any railway company in the United Kingdom, which for three years previous to the date of investment shall have paid dividends on its ordinary shares or stocks, or in the debentures of any railway in India or any British colony, the payment of interest whereon may be guaranteed by the Government of India or such British colony respectively: BUT DECLARING that the trustees shall not be entitled to invest the trust funds in the purchase of any bank shares or stock, excepting only that of the Bank of England, and generally with full and unlimited power to invest or reinvest the trust funds in such way and manner as they shall think proper, but subject always to the declaration before written with regard to their not selling and disposing of the stocks

transferred to them by the said A as aforesaid without his written consent, unless in the event before referred to: AND DECLARING that during the lives of the said A and B and the survivor of them, their consent and the consent of such survivor shall be obtained in writing to the investment of any of the trust funds: DECLARING FURTHER, that the trustees shall not be responsible for the sufficiency of the securities upon which any part of the trust funds may be invested, provided such security was reckoned sufficient by them at the time when the investment was made, or for the securities taken over by them; nor shall they be liable for any loss that may arise should any property, fund, stock, or share which they may purchase with the trust funds or any part thereof not realise the price or prices at which the same were purchased, and the persons to whom the trust funds may be lent, or the purchaser or assignee of the stocks or shares held by the trustees, or any securities or investments of the trust funds, shall not be bound nor entitled to see to the application of the sums of money payable by them to the trustees, or to the fulfilment of all or any of the purposes of the trust or conditions of the contract, and shall have no concern whatever with the same; AND it is hereby DECLARED that it shall be in the power of the trustees, with the consent of the said spouses during their joint lives, or of the surviving spouse during his or her life, to nominate and appoint a trustee or trustees to act in the trust hereby created in addition to the trustees before named, or in place of one or more of them who may not accept, or may die, or resign, or become incapable of acting, and after the decease of the said spouses or survivor, or in the event of them, him, or her being temporarily or permanently in such a state of health as to be incapable of exercising the said power of nomination and appointment of new trustees (regarding which state of health a written statement by the trustees shall be sufficient evidence to all parties whomsoever), the trustees are hereby empowered from time to time to assume any other person, one or more, whom they may think fit to act along with them, or after them, in the management of the trust hereby created; AND the trustees shall have power to resign the office of trustees at any time, and shall not be bound to comply with, nor be restricted by, the 10th section of "The Trusts (Scotland) Act, 1867," and such resignation may be made by a minute or writing to that effect, to be recorded in the Books of Council and Session, or in any other competent manner, and they

shall not be liable for omissions of any kind, nor *singuli in solidum*, nor for one another, but each for his own actual and personal intromissions only, and the signing or joining in signing for the sake of conformity any deeds, receipts, or writings acknowledging receipt of money, shall not imply intromission, and intromission shall only consist of the actual and personal receipts of moneys belonging to the estate, any law or practice to the contrary notwithstanding, neither shall they be liable for the solvency of any factors, or other person or persons, or bank into whose hands any trust funds may come, or be deposited or lent, except that such factors, or other persons, or bank shall be habit and repute responsible at the time of their being appointed, or for moneys being deposited or lent by the trustees: WITH power to the trustees to demand payment of all sums due or to become due and payable by the trustees of the said deceased

to the said B, or by any other party, and to adjust accounts with the said trustees and others, and to grant all necessary discharges for the sums received by them: WITH power also to the trustees to APPOINT factors and agents, who may be of their own number, with or without caution, and to allow them the usual professional charges and suitable remuneration, for which factors and agents the trustees shall not be further liable than that they are habit and repute responsible at the time of their appointment: AND it is hereby AGREED, PROVIDED, and DECLARED that all manner of action and execution shall pass upon this contract for implement of the whole provisions thereof in favour of the said B, and child or the children of the marriage, at the instance of the said trustees and their foresaids; AND FURTHER, the said A, failing any later nomination by him, hereby nominates and appoints the said B, L, M, and N, and their foresaids, to be tutors and curators and guardians, or tutor and curator and guardian to the child or children of the said intended marriage during their respective pupilarities and minorities: DECLARING that the said tutors and curators shall have power to resign, and they shall not be liable for omissions, errors, or neglect of management, nor *singuli in solidum*, but each shall be liable for his own actual intromissions only: AND it is hereby expressly PROVIDED and DECLARED that the foregoing contract of marriage, and whole provisions and contents thereof, shall be construed according to the law and practice of Scotland, and the rights of parties shall be regulated thereby; AND all parties consent

to the registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c. (*but instead of saying are subscribed say are signed, sealed, and delivered, &c.*).(a)

Signed, sealed, and delivered by the above-  
named A before and in the presence  
of



Signed, sealed, and delivered by the above-  
named B before and in the presence  
of



**2. Contract of Marriage** *where the Wife is possessed of moveable Estate, and where the Provisions are secured by a Conveyance to Trustees, and where the Fathers of both the Husband and Wife convey Moveable Estate as Provisions for the Spouses, and the Children of the Marriage.*

Inductive  
clause

It is CONTRACTED, AGREED, and ENDED between the parties following—*videlicet*: A (*designation*), of the first part (the said A being hereinafter described as the first party); B, daughter of E (*designation*), of the second part (the said B being hereinafter described as the second party); C, father of the first party, of the third part (the said C being hereinafter described as the third party), and the said E, of the fourth part (the said E being hereinafter described as the fourth party), in manner following: THAT IS TO SAY, the first and second parties have accepted, and hereby accept, of each other for lawful spouses, and promise to solemnise their marriage with all convenient speed: IN CONTEMPLATION OF which

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(a) It is often advisable that the signatures to a contract of marriage should be authenticated in the English as well as the Scotch form. Where either of the parties to the contract are under age and are of Scottish domicile, it is preferable that the consent of the curators or guardians should be obtained to the contract, and that such curators or guardians should be parties to it. That is not, however, essential in the case of a Scotch minor unless the provisions of the contract entered into without such consent can be proved to be to the lesion of the minor, in which case they can be set aside. In the case of an English or Irish minor entering into a contract of marriage without the consent of curators or guardians, the contract can be set aside as a nullity. In the case of a marriage between persons of Scotch and foreign nationality, it is therefore necessary for the conveyancer to find out whether the foreigner is *sui juris* and of full age according to the law of his or her domicile before the contract is entered into.

marriage as a provision for the first and second parties, and for the child or children of their marriage, and in consideration of the disposition and assignation by the second and fourth parties after-written, the third party hereby BINDS and OBLIGES himself as soon as the said marriage has been solemnised to DISPONE and CONVEY to and in favour of L, M, and N (*designations*), and the acceptors and acceptor, survivors and survivor of them, and the heir-male of the last survivor, as trustees for the ends, uses, and purposes after-written, the following railway stocks—*videlicet* (*describe*), but all in trust for the ends, uses, and purposes following—*videlicet*:

(*First*) For payment of the free annual income of the said railway stocks, after payment of the expenses of the trust, to the first party during all the days of his life, for his liferent alimentary use allennary, declaring that his right and interest therein shall not be affectable by his debts or deeds, or the diligence of his creditors, and in the event of the insolvency or bankruptcy of the first party, and of its being found by any court of law that the provision above conceived in his favour is in excess of a strictly alimentary provision, it is hereby PROVIDED and DECLARED that from and after the date of said finding, and during said insolvency the said income shall be payable to the first party to the extent only of his alimentary interest therein and the excess shall thereafter during the subsistence of the marriage, and said insolvency be payable to the second party on her sole receipt free from the debts and engagements and control of and exclusive of the right of administration and all other rights of the first party, for behoof of herself and of the children of the said intended marriage, the second party having the sole and exclusive discretionary power of application thereof: DECLARING FURTHER that the said income payable to the first party shall include all dividends and interest on said stocks payable after the date of the marriage, although wholly or partially applicable to a period prior to that date, said liferent being always subject to be terminated in the event provided for in the fifth purpose hereof. (*Second*) In the event of the first party predeceasing the second party, for payment to the second party of the income of the said railway stocks during all the days of her life so long as she remains the widow of the first party, for her own alimentary use allennary: AND DECLARING that the same shall not be affectable by her debts or deeds, or attachable by her creditors, but shall be to her an alimentary provision allennary

I. HUSBAND'S TRUST.

(1) Obligation by the husband's father to transfer stocks to trustees.

(2) Purposes of husband's trust.

(1) Payment of income to husband.

Provision for husband's bankruptcy.

(2) Payment of income to the wife on survival, with contingencies on her second marriage.

Second  
marriage  
of wife.

Restriction  
to one-half  
if children  
of first mar-  
riage alive.

Remaining  
half to be  
employed  
by the  
trustees for  
children's  
mainten-  
ance.

Capital to  
be paid to  
children on  
majority or  
marriage in  
the case of  
daughters.

Power of  
apportion-  
ment.

during all the days of her life, so long as she remains the widow of the first party : BUT DECLARING that out of said income the second party shall be bound to maintain and educate, according to their station in life, the sons to be born of the marriage until they respectively attain twenty-one years of age, and the daughters to be born of the marriage until they are married respectively, whether that event happens before or after the age of twenty-one, unless the said sons and daughters are otherwise suitably provided for, of which the said trustees shall be the sole judges, and in the event of the second party entering into a second marriage, and of there being no children of the present intended marriage then alive, she shall continue to liferent the whole of the income of the said railway stocks, but in the event of her entering into a second marriage, and of there being a child or children of the present intended marriage then alive, her liferent of the income of the said railway stocks shall be restricted to one-half, and the remaining half of the income, or so much thereof as the said trustees shall think fit, shall be employed by the said trustees for the maintenance and education of the said child or children until they respectively attain majority in the case of sons, or until they respectively attain that age or are married, whichever shall first happen, in the case of daughters ; AND on these events happening, the capital set free from the liferent of the second party by her second marriage, being one-half of the said railway stocks and any accumulations of income of said half of the said railway stocks shall be apportioned and paid over to the said children respectively, in such proportions, and subject to such restrictions as the said first and second parties, or the survivor of them, may appoint by any deed of apportionment ; AND failing such deed of apportionment, then equally among them, share and share alike : BUT DECLARING that said share of capital shall not vest in any child until the date when payment is due : DECLARING that the issue of any child of the marriage, who predeceases the period of vesting, shall take the share, both original and accreting, to which their predeceasing parent would have been entitled had he or she survived, and declaring that it shall be in the power of the said trustees to advance a portion not exceeding one-half of any child's prospective share of capital for the advancement in life or otherwise for the benefit of such child, notwithstanding that the said prospective share may not have vested, and which advance shall be

free of interest. (*Third*) Upon the death of the survivor of the first and second parties, for payment of the capital of the said railway stocks, (the whole or the remaining half as the case may be), amongst the children of the marriage on their respectively attaining majority in the case of sons, or in the case of daughters on their respectively attaining majority or being married, whichever shall first happen, in such proportions and subject to such conditions and restrictions as the first and second parties or the survivor of them may appoint by any deed of apportionment; AND failing such deed of apportionment then equally among them, share and share alike, declaring that the said share of capital shall not vest in any child until the date when payment is due, and declaring that the issue of any child of the marriage who predeceases the said period of vesting shall take the share, both original and accrescing, to which their predeceasing parent would have been entitled had he or she survived, and in the event of any share of the capital being appointed to any child under any deed of apportionment as aforesaid, such share so appointed shall be attributed to such child's eventual share in the event of any of the capital remaining unappointed at the death of the survivor of the first and second parties, provided that in no case shall the share of such child be less than his or her original appointed share : AND DECLARING that it shall be in the power of the said trustees during the minority of the said children to employ the income of each child's eventual share or so much thereof as may be necessary, of which the said trustees shall be the sole judges, in maintaining and educating such child, and also even during the lifetime of the first and second parties, with their consent or the consent of the survivor to advance a portion not exceeding one-half of any child's prospective share of capital for the advancement in life or otherwise for the benefit of such child, and which advance shall be free of interest. (*Fourth*) In the event of the second party being the survivor, and of there being no child of the marriage, or of such child or children, if any, all dying before acquiring a vested interest, and without leaving issue, then the whole of the capital of the said railway stocks shall revert and belong, and be transferred and conveyed to such person or persons as the first party shall direct under any will or testamentary writing executed by him, and failing such direction then to such person or persons as would have become entitled to his

(3) On death of the survivor of the spouses for payment of the capital to the children.

Power of apportionment by spouses and survivor.

Period of vesting.

Issue of predeceasing child to take said child's share.

Collation in the event of any sum left unappointed.

Power to trustees to employ the income for children's maintenance.

Power to advance capital for the benefit of the children.

(4) If the wife is the survivor and there are no children on wife's death, capital to be conveyed as husband may direct, and falling direction, to his heirs.

(5) If husband survive and no child or issue acquires a vested interest, capital to revert to husband.

moveable estate had he died intestate and unmarried. (*Fifth*) In the event of the first party being the survivor, and of there being no child or children of the marriage, nor the issue of any such child or children alive at the death of the second party, or of there being a child or children of the said marriage or issue of any such child or children alive at the date of the death of the second party, but such child or children or issue all dying before acquiring a vested interest, then in either of these events, the whole of the capital of the said railway stocks shall revert and belong and be transferred and conveyed to the first party, whom failing, to such person or persons as he may direct by any will or testamentary writing executed by him, and failing such direction, then to such person or persons as would have become entitled to his moveable estate had he died intestate and unmarried. (*Sixth*)

(6) If husband survive and enter into second marriage, power to settle one-half of capital on second wife and family.

In the event of the first party being the survivor and of his entering into a second marriage, and of there being a child or children of the marriage or the issue of any such child or children then alive, it shall be in the power of the first party to settle a proportion of the capital of the said railway stocks not exceeding one-half upon his second wife in liferent and the children of the second marriage in fee or otherwise subsequent to his second marriage to apportion a proportion of the capital of the said railway stocks not exceeding one-half to and among the child or children of such

Discharge of wife's legal rights.

second marriage: AND it is hereby DECLARED that the provisions before conceived in favour of and settled upon the second party shall be and are hereby accepted in full satisfaction to her of all claim of terce, *jus relictæ*, or other claim whatsoever, whether by statute or at common law, which she could have against the estate or representatives of the first party in the event of her surviving him, which legal rights are hereby renounced and discharged by the second party, but saving and reserving to her such provisions as may hereafter be made by the first party in her favour

Discharge of children's legal rights.

by testamentary or *inter vivos* deed or writing: DECLARING FURTHER, that the provisions hereinbefore and hereinafter settled upon the child or children of the marriage shall be in full satisfaction to them of all claims of legitim, portion natural, bairns' part of gear, executry, and other legal claims whatsoever which they could have against their father and mother, or either of them or their respective estates or representatives, goodwill only excepted: BUT

RESERVING ALWAYS the right of such child or children as the legal representatives of their father or mother to succeed to his or her other estate and effects in so far as he or she shall not otherwise have disposed of the same: DECLARING, however, that in the event of legitim being effectually claimed by the children of any subsequent marriage of either of the spouses, the right of the children of the present intended marriage to a share of the legitim fund of that spouse is hereby reserved, but in case of their exercising the said reserved right, they shall be bound to renounce and collate the provisions herein made in the fund: FOR WHICH CAUSES, AND ON THE OTHER PART, as a provision for the first and second parties and for the child or children of their marriage, the fourth party hereby ASSIGNS, CONVEYS, and MAKES OVER to and in favour of the said L, M, and N as trustees foresaid and their foresaids the sum of £                      sterling, which he the said fourth party BINDS and OBLIGES himself to pay as soon as the said marriage has been solemnised; and the second party, with the special advice and consent of the first party, her intended husband, hereby ASSIGNS, CONVEYS, and MAKES OVER to and in favour of the said L, M, and N as trustees foresaid and their foresaids, and that in trust for the ends, uses, and purposes after written: ALL AND WHOLE her whole means and estate, heritable and moveable, real and personal, presently belonging or which she may acquire or succeed to during the subsistence of the marriage, excepting (*take in any property presently belonging to the intended wife which she wishes excepted*): AND which sum of £                      provided by the fourth party shall be invested by the said trustees in their own names as trustees in accordance with the powers herein-after conferred upon them, and along with the estate hereby conveyed by the second party shall be held by the said trustees in trust always for the ends, uses, and purposes following—*videlicet*: (*First*) For payment of the free annual income after payment of the expenses of the trust to the second party for her own alimentary use alienably during all the days of her life, exclusive of the right of administration of the first party; AND DECLARING that the same shall not be affectable by his debts or deeds or attachable by his creditors, and that her own receipts for payments of said income shall be sufficient discharges therefor, said liferent being subject always to be terminated in the events provided for by

Reservation of children's right to succeed to father and mother's other estate if not otherwise disposed of.

If children of second marriage claim legitim, reservation of rights of children of present marriage.

II. WIFE'S TRUST.

(1) Wife's father makes over sum of money to the trustees to be paid as soon as the marriage is solemnised.

(2) Wife conveys all her means and estate to the trustees.

(3) Purposes of wife's trust.

(1) Payment of income to wife during her life.

(2) After the death of wife for payment of income to husband of the sum provided by wife's father. the fifth purpose hereof. (*Second*) In the event of the second party predeceasing the first party, for payment to the first party of the income of the said sum of £                      for his alimentary use allenarly during all the days of his life: DECLARING that the same shall not be assignable by him nor attachable by his creditors: AND with regard to the estate hereby conveyed by the second party it is hereby DECLARED that it shall be in the power of the second party by will to confer a liferent of the said estate hereby conveyed by her upon the first party in the event of his surviving her, under such conditions as she may think fit to impose by her will; BUT DECLARING that in the event of there being a child or children of the present intended marriage, and of the first party entering into a second marriage, his liferent of the said estate hereby conveyed by the second party, if appointed to him by her will (but not his liferent of said sum of £                      provided by the fourth party which is to continue during all the days of the life of the first party, without any appointment by the second party, and even in the event of his entering into a second marriage), shall cease, and the income of the said estate hereby conveyed by the second party, or so much thereof as the said trustees shall think fit, shall thereafter be employed by the said trustees for the maintenance and education of the said child or children until they respectively attain majority in the case of sons or until they respectively attain that age or are married, whichever shall first happen in the case of daughters; AND on these events happening, the capital of the estate hereby conveyed by the second party set free from the liferent of the first party by his second marriage, and any accumulations of income of said capital, shall be appointed and paid over to the said children respectively in such proportions and subject to such restrictions as the said first and second parties or the survivor of them may appoint by any deed of apportionment: AND failing such deed of apportionment, then equally among them share and share alike, but declaring that said share of capital shall not vest in any child until the date when payment is due, declaring that the issue of any child of the marriage who predeceases the period of vesting shall take the share, both original and accrescing, to which their predeceasing parent would have been entitled had he or she survived; AND DECLARING that it shall be in the power of the said trustees to advance a portion not exceeding one-half of any

Power to wife by will to confer a liferent of her own estate on husband.

Liferent of wife's estate but not of sum provided by wife's father to cease on second marriage of husband.

Income of wife's estate on second marriage of husband to be employed by the trustees in maintenance of the children.

Capital to be paid to children on majority or marriage in the case of daughters.

Power of apportionment.

child's prospective share of capital for the advancement in life or otherwise for the benefit of such child, notwithstanding that the said prospective share may not have vested, and which advance shall be free of interest. *(Third)* Upon the death of the survivor of the first and second parties, for payment of the capital of the said sum of £ , and also (in the event of its not having fallen under the provisions of the immediately preceding purpose hereof through the second marriage of the first party) of the estate hereby conveyed by the second party, amongst the children of the marriage on their respectively attaining majority in the case of sons, or in the case of daughters, respectively attaining majority or being married, whichever shall first happen, in such proportions and subject to such conditions and restrictions as the said first and second parties or the survivor of them may appoint by any deed of apportionment; AND failing such apportionment, then equally among them share and share alike, declaring that said share of capital shall not vest in any child until the date when payment is due; AND DECLARING that the issue of any child of the marriage who predeceases the period of vesting shall take the share, both original and accreting, to which their predeceasing parent would have been entitled had he or she survived; AND in the event of any share of capital being appointed to any child under any deed of apportionment as aforesaid, such share shall be attributed to such child's eventual share in the event of any of the capital remaining unappointed at the death of the survivor of the first and second parties, but declaring that such eventual share shall in no case be less than the share originally appointed; AND DECLARING that it shall be in the power of the said trustees during the minority of the said children, to employ the income of each child's eventual share, or so much thereof as may be necessary, of which the said trustees shall be the sole judges, in maintaining and educating such child; AND ALSO even during the lifetime of the first and second parties, with their consent or the consent of the survivor, to advance a portion not exceeding one-half of any child's prospective share of capital for the advancement in life or otherwise for the benefit of such child, and which advance shall be free of interest. *(Fourth)* In the event of the first party being the survivor, and of there being no child of the marriage, or of such child or children, if any, all dying before acquiring a vested interest, and without leaving issue, then the whole of the capital of the £ , and also the estate conveyed by the

(3) On the death of the survivor of the spouses for payment of the capital to the children.

Power of apportionment.

Period of vesting.  
Issue of predeceasing child to take said child's share.

Collation in the event of any sum left unappointed.

Power to trustees to employ the income for children's maintenance and education.

Power to advance capital for the advancement in life or benefit of the children.

(4) If the husband survives, and there are no children on his death, the capital to be conveyed as wife may direct, and failing direction, to her next-of-kin.

(5) If wife is the survivor, and no child or issue acquires a vested interest, capital to revert to wife.

(6) If wife survive and enters into a second marriage, power to settle one-half of capital on second husband and children.

Discharge of husband's legal rights.

second party (if she has appointed a liferent of such estate to the first party) shall revert and belong to such person or persons as the second party shall direct under any will or testamentary writing executed by her; AND failing such direction, then to such person or persons as would have become entitled to his moveable estate had she died intestate and unmarried. (*Fifth*) In the event of the second party being the survivor, and of there being no child or children of the marriage, nor the issue of any such child or children alive at the death of the first party, or of there being a child or children of the said marriage or issue of such child or children alive at the date of the death of the first party, but such child or children or issue all dying before acquiring a vested interest, then, in either of these events, the whole of the capital of the said sum of £ , and the estate hereby conveyed by the second party, shall revert and belong to the second party, whom failing, to such person or persons as she may direct under any will or testamentary writing executed by her, and failing such direction, to such person or persons as would have become entitled to her moveable estate had she died intestate and unmarried. (*Sixth*) In the event of the second party being the survivor, and of her entering into a second marriage, and of there being a child or children of the marriage or issue of any such child or children then alive, it shall be in the power of the second party to settle a proportion of the capital of the said sum of £ , and of the estate hereby conveyed by her not exceeding one-half upon her second husband in liferent, and the children of the second marriage in fee; or otherwise subsequent to her second marriage, to apportion a part of the capital of the said sum of £ , and of the estate hereby conveyed by her not exceeding one-half, to and among the child or children of such second marriage; AND the said first party hereby renounces his right of administration over all other property and effects presently belonging to the second party, or which she may afterwards succeed to or acquire, not falling under the trust hereby created, and homologates the before written disposal of the sum of £ , and the estate hereby conveyed by the second party as in full of all his legal rights over her estate both heritable and moveable, and hereby discharges all right of courtesy or other claims competent to him over any heritable estate of which she may die possessed; and also all claims competent to him whether conferred by the "Married Women's Property (Scotland) Act, 1881,"

or any statutory modification or extension thereof or otherwise, whether by statute or at common law, over any moveable estate presently belonging to her or of which she may die possessed, but saving and reserving to the first party such provisions as may hereafter be made by the second party in his favour by testamentary or *inter vivos* deed or writing: AND it is hereby DECLARED that it shall be in the power of the first and second parties, and the survivor of them, in any deed of apportionment of any of the before settled funds amongst the children of the marriage to restrict the share of any child to a liferent if they or the survivor of them consider that expedient: AND it is hereby FURTHER PROVIDED and DECLARED that the trustees acting for the time in the execution of the trust hereby created, shall have and possess all the powers, privileges, and immunities conferred on gratuitous trustees by the Acts of Parliament already passed or to be passed in their favour, and specially, without prejudice to such powers, the said trustees shall have, and they are hereby invested with, the fullest powers of administration and management of the estate, property, and effects, falling or that may fall under the trust, including power of sale and submission, and in particular and without prejudice to the powers and privileges belonging or competent by law to trustees or the general powers of administration and management hereby conferred, they shall have full power to complete all proper titles in their persons to the property, estate, and effects hereinbefore conveyed to them and to the investments and securities thereof, and at their discretion to uplift, sell, or otherwise realise, and, if necessary, sue for and recover the same and the investments and securities and prices and proceeds thereof, and the interest and other income and profits arising therefrom: AND it is hereby DECLARED that the first, second, third, and fourth parties shall be bound as they hereby BIND and OBLIGE themselves and their respective heirs, executors, and successors, to grant all necessary deeds and writings in favour of the trustees hereinbefore appointed for vesting them in the trust-estate hereby conveyed, and for implementing and fulfilling the purposes of the trusts before written: AND FURTHER, the trustees shall not be liable for any loss which may in any way arise on account of their allowing the trust-estate or any part thereof to remain invested in any of the securities in which they may find the same when coming into their hands; WITH power also to the said

Power to spouses to restrict children's right to a liferent.

Powers of trustees.

Parties to execute all deeds necessary for vesting the trustees in trust-estate.

Power to  
appoint  
factor.

trustees to invest the trust funds in their own names in any of the investments sanctioned by statute for trust funds by the law of England or by the law of Scotland or in (*here take in powers of investment as on p. 705, or otherwise*), and to alter, vary, and change such investments and securities whenever and so often as it may appear to the said trustees to be necessary or proper : AND it is hereby DECLARED that the said trustees shall not be bound to do diligence, nor shall they be liable for omissions of any kind or neglect of management, or for the insolvency of debtors or factors or others whom they may employ in the execution of the said trust, nor for any depreciation in the value or price of any of the stocks, shares, or securities in or upon which any part of the trust funds may be lent or invested nor *singuli in solidum*, but each shall be liable for his own actual and personal intrusions only : AND it is hereby DECLARED that in the event of the number of the trustees acting under these presents being reduced to less than three, the remaining trustees shall be bound to assume one or more new trustees, so that the number acting under these presents shall never be less than three : AND full power is hereby given to the said trustees and their foresaids to appoint a factor or agent under them to manage the affairs of the trust, and such factor or agent may be of their own number, and shall be entitled to receive the usual professional charges for all work done by him in the management of the trust, any law or practice to the contrary notwithstanding : DECLARING that these presents shall be construed according to the law of Scotland : AND all parties consent to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

**3. Contract of Marriage with Conveyance to Trustees, where Husband's Estate consists of Heritable and Moveable Estate, and where the Wife's Estate consists of Moveable Estate and of Heritable Estate to which she has not obtained a Conveyance, and where the Father of the Husband makes a Provision for the Spouses by granting a Bond and Disposition in Security over Heritable Estate, and the Mother of the Wife also makes Provision for the Spouses by a Conveyance of Moveable Estate.**

Inductive  
clause.

IT IS CONTRACTED, AGREED, and MATRIMONIALY ENDED between the parties following—viz., A (*designation*), on the first part (the

said A being hereinafter called the first party), B, daughter of the deceased E (*designation*), on the second part (the said B being hereinafter called the second party), C (*designation*), the father of the said first party (the said C being hereinafter called the third party), and F, widow of E, and mother of the said second party (the said F being hereinafter called the fourth party), in manner following: THAT IS TO SAY, the first and second parties have ACCEPTED and hereby ACCEPT of each other for lawful spouses, and promise to solemnise their marriage with all convenient speed. IN CONTEMPLATION OF which marriage, as a provision for the first and second parties and for the child or children of their marriage, and IN CONSIDERATION OF the disposition and assignation by the second and fourth parties after written: (*Primo*) The first party hereby DISPONES and CONVEYS to and in favour of L, M, and N (*name and design trustees*), and the acceptors and acceptor, survivors and survivor of them, and the heir-male of the last survivor as trustees for the ends, uses, and purposes after written, ALL AND WHOLE his whole means and estate, heritable and moveable, real and personal, presently belonging to him, or which he may acquire or succeed to during the subsistence of the marriage excepting (*here insert any property not intended to fall within the trust*). (*Secundo*) The third party hereby BINDS and OBLIGES himself and his heirs, executors, and successors, as soon as the said marriage has been solemnised, to execute in favour of the said L, M, and N as trustees foresaid, and their foresaids, and to deliver to the said trustees a valid bond and disposition in security for £ , bearing interest at the rate of £ per cent. per annum, commencing at the date of the said marriage, over the lands and estate of in the county of ; AND which estate conveyed by the first party, and bond and disposition in security for £ , shall be held by the said trustees in trust for the ends, uses, and purposes following—*videlicet*: (*First*) For payment of the free annual income, after payment of the expenses of the trust, to the first party during all the days of his life for his liferent alimentary use alienarly, and for the maintenance of the second party and the maintenance and education of the children of the marriage: DECLARING that his right and interest therein shall not be affectable by his debts or deeds, or the diligence of his creditors; AND in the event of the insolvency or bankruptcy of the first party, and of its being found

I. HUSBAND'S TRUST.

(1) Husband conveys his means and estate to trustees.

(2) Obligation by the father of the husband to execute a bond and disposition in security in favour of the trustees.

Purposes of husband's trust.

(1.) For payment of income to husband, and for the maintenance of the wife and children.

by any court of law that the provision above conceived in his favour is in excess of a strictly alimentary provision, it is hereby PROVIDED and DECLARED that from and after the date of said finding and during said insolvency, the said income shall be payable to the first party to the extent only of his alimentary interest therein, and the excess shall thereafter during the subsistence of the marriage and said insolvency be payable to the second party on her own receipt for the maintenance of herself and the children of the marriage free from the debts and engagements and control, and exclusive of the right of administration and all other rights of the first party, and for behoof of herself and, if and whilst any survive, of the children of the marriage, the second party having the sole and exclusive discretionary power of application thereof. (*Second*) In the event of the first party predeceasing the second party, for payment to the second party of the income of the said means and estate hereinbefore conveyed by the first party and bond and disposition in security for £ during all the days of her life, so long as she remains the widow of the first party, for her own alimentary use alienably; AND DECLARING that the same shall not be affectable by her debts or deeds or attachable by her creditors, but shall be to her an alimentary provision alienably during all the days of her life so long as she remains the widow of the first party; BUT DECLARING that out of said income the second party shall be BOUND to maintain and educate, according to their station in life, the sons to be born of the marriage, until they respectively attain twenty-one years of age, and the daughters to be born of the marriage, until they are married respectively, whether that event happens before or after the age of twenty-one years, unless the said sons and daughters are otherwise provided for, of which the said trustees shall be the sole judges.

(*Third*) Upon the death of the survivor of the first and second parties, or upon the second marriage of the second party, for payment of the capital of the said means and estate and bond and disposition in security for £ amongst the children of the marriage on their respectively attaining majority, in the case of sons, or, in the case of daughters, on their respectively attaining majority or being married, whichever shall first happen, in such proportions and subject to such conditions and restrictions as the said first party, whom failing, the said second party, may appoint by any deed of appointment, and failing any deed of appointment, then equally among

(2) After death of husband for payment of income to the wife during viduity.

(3) On death of survivor or on the wife's re-marriage, trust-estate to be paid to children on majority or marriage.

Power of appointment.

them share and share alike: DECLARING that the share of capital appointed to any child shall not vest in any child until payment is due: AND DECLARING that the issue of any child of the marriage who predeceases the period of vesting shall take the share, both original and accrescing, to which their predeceasing parent would have been entitled had he or she survived; AND in the event of any share of capital being appointed to any child under any deed of appointment as aforesaid, such share so appointed shall be collated, and shall be attributed to the eventual share of the child to whom such share has been appointed, in the event of any of the capital remaining unappointed at the death of the first and second parties, and of such child claiming to share in such unappointed capital: BUT DECLARING that in no case shall the share of a child to whom a share has been appointed be less in consequence of such collation than the original share appointed: AND DECLARING that it shall be in the power of the said trustees during the minority of the said children to employ the income of each child's prospective share, or so much thereof as may be necessary, of which the said trustees shall be the sole judges, in maintaining and educating such child; AND ALSO, even during the lifetime of the first and second parties, with their consent, or the consent of the survivor, to advance a portion not exceeding one-half of any child's prospective share of capital for the advancement in life, or otherwise for the benefit of such child, and which advance shall be free of interest. (*Fourth*)

In the event of the second party being the survivor, and of there being no child or children of the marriage, nor the issue of any child or children of the marriage alive at the date of the death of the second party, or at the date of her second marriage, or of such child or children, if any, all dying before acquiring a vested interest, and without leaving issue, then the capital of the said means and estate, so far as derived from the first party, shall belong, and be conveyed, to such person or persons as the first party shall direct under any will or testamentary writing executed by him; AND failing such direction, then to such person or persons as would have become entitled to his moveable estate had he died unmarried and intestate, and the said bond and disposition in security for the said sum of £ shall revert and belong and be transferred to the third party or his heirs and assignees. (*Fifth*)

In the event of the first party being the survivor, and of there

Period of vesting.

Issue of predeceasing child to take their parent's share.

Collation in the event of any sum left unappointed.

Power to trustees to employ the income for maintenance and education of children.

Power to advance capital for the advancement in life or benefit of the children.

(4) If the wife is the survivor, and there are no children alive at her death or on her re-marriage, capital derived from husband to be conveyed as husband may direct, and failing direction, to his next-of-kin, and if estate derived from third party, to revert to said third party.

(6) If husband is survivor, and no child or issue acquires a vested interest, capital to revert to husband.

being no child or children of the marriage, or issue of any child or children alive at the death of the second party, or of there being a child or children of the marriage, or issue of any child or children, alive at the date of the death of the second party, but such child or children or issue all dying before acquiring a vested interest, then in these events the capital of the said means and estate, so far as derived from the first party, shall revert and belong, and be transferred and conveyed, to the first party, whom failing, to such person or persons as he may direct by any will or testamentary writing executed by him, and failing such direction, then to such person or persons as would have become entitled to his moveable estate had he died intestate and unmarried, and on the death of the first party the said bond and disposition in security for £                      shall revert and belong and be transferred to the

Discharge of wife's and children's legal rights.

third party or his heirs and assignees. [*Take in here the clauses discharging the wife's legal claims and the children's legal rights given in the immediately preceding style*]: FOR WHICH CAUSES, AND ON THE OTHER PART, as a provision for the first and second parties

#### II. WIFE'S TRUST.

(1) Wife's mother obliges herself to transfer certain investments.

and for the children of the marriage (*First*) the fourth party hereby BINDS and OBLIGES herself as soon as the marriage has been solemnised to DISPONE, CONVEY, and MAKE OVER to and in favour of the said L, M, and N as trustees foresaid and their foresaids the sum of £                      presently invested as follows: (*here describe the investments*);

(2) Wife conveys her whole means and estate with certain exceptions to the trustees.

and (*Second*) the second party, with the special advice and consent of the first party, her intended husband, hereby ASSIGNS, CONVEYS, and MAKES OVER to and in favour of the said L, M, and N as trustees foresaid and their foresaids, and that in trust for the ends, uses, and purposes after-written ALL AND WHOLE her whole means and estate, heritable and moveable, real and personal, presently belonging or which she may acquire or succeed to during the subsistence of the marriage excepting (*First*) the lands and estate of                      after-mentioned; (*Second*) the sum of £

at present belonging to her, and standing at her credit on current account with the Bank of                      ; (*Third*) any furniture, plate, jewellery, and any specific articles which she now possesses or may acquire or succeed to during the subsistence of the marriage, and any legacies of money under the value of £500 from any one source and at any one time which she may succeed to during the subsistence of the marriage;

(Fourth) any annuity or liferent to which she may succeed and which she will retain for her own separate use; (Fifth) any accumulations, whether invested or not, of income belonging to her, including any accumulations of rents of the lands and estate of or other income connected therewith due to her by the trustees of her late father at the date of her succession to the said lands and estate:

AND which sum of £ and the investments thereof hereby conveyed by the fourth party shall be held by the said trustees along with the estate hereby conveyed by the second party in trust always for the ends, uses, and purposes—*videlicet*: (First) For payment of

Purposes of wife's trust.

the free annual income of the funds provided and settled by the fourth and second parties, after payment of the expenses of the trust, to the second party during all the days of her life for her own alimentary use alienably, exclusive of the right of administration of the first party, and declaring that the same shall not be affectable by his debts or deeds or attachable by his creditors, and that her own receipts for payment of said income shall be sufficient discharges therefor, said liferent being subject always to be terminated in the

(1) Payment of income to wife during her life.

events provided for by the sixth purpose hereof. (Second) In the event of the second party predeceasing the first party, and of there being a child or children of the marriage or issue of a child or children of the marriage then alive, for payment to the first party of the said income of the said funds provided by the fourth party, during all the days of his life so long as he remains unmarried, and so long as there is a child or children of the marriage or issue of a child or children of the marriage alive, for his own alimentary use; AND DECLARING that the same shall not be affectable by his debts or deeds,

(2) After wife's death if a child or issue of a child is alive, income of fund provided by wife's mother to husband so long as unmarried or so long as a child or issue of a child survive.

or attachable by his creditors, but shall be to him an alimentary provision alienably; BUT DECLARING that out of said income the first party shall be bound to maintain and educate according to their station in life the sons to be born of the marriage until they respectively attain twenty-one years of age, and the daughters to be born of the marriage until they are married respectively, whether that event happens before or after the age of twenty-one, unless the said sons and daughters are otherwise provided for:

Husband bound to maintain and educate children.

of which the said trustees shall be the sole judges; AND in the event of the death of all the children of the marriage or their issue during the lifetime of the first party, his liferent of the sum of £ provided and settled by the fourth party shall cease, and the said

On death of all the children during husband's lifetime, husband's liferent of sum provided by the wife's mother to cease.

sum of £                      shall revert and belong and be transferred and conveyed to the fourth party or her heirs and assignees. (*Third*) In the event of the second party predeceasing the first party, for payment to the first party of the income of the funds provided and settled by the second party during all the days of his life so long as he shall remain unmarried, for his own alimentary use allenarly; AND DECLARING that the same shall not be affectable by his debts or deeds or attachable by his creditors, but shall be to him an alimentary provision allenarly: BUT DECLARING that out of said income the first party shall be bound to maintain and educate according to their station in life the sons to be born of the marriage until they respectively attain twenty-one years of age, and the daughters to be born of the marriage until they are married respectively, whether that event happens before or after the age of twenty-one unless the sons and daughters are otherwise provided for, of which the said trustees shall be the sole judges. (*Fourth*) Upon the death of the survivor of the first and second parties, or upon the second marriage of the first party, for payment of the capital of the said funds provided and settled by the fourth and second parties amongst the children of the marriage on their respectively attaining twenty-one years of age in the case of sons, or in the case of daughters respectively attaining said age or being married, whichever shall first happen, in such proportions and subject to such conditions and restrictions as the said second party, whom failing, the said first party may appoint by any deed of appointment, and failing any deed of appointment, then equally among them share and share alike: DECLARING that said share of capital shall not vest in any child until the date when payment is due; AND DECLARING that the issue of any child of the marriage who predeceases the period of vesting shall take the share, both original and accrescing, to which their predeceasing parent would have been entitled had he or she survived; AND in the event of any share of the capital being appointed to any child under any deed of appointment, such share so appointed shall be collated, and shall be attributed to the eventual share of the child to whom such share has been appointed in the event of any capital remaining unappointed at the death of the first and second parties, and of such child claiming a share in such unappointed capital, but declaring that in no case

(3) After wife's death for payment to husband during his life of income of funds provided by the wife.

Husband bound to maintain and educate children.

(4) Upon death of survivor or upon re-marriage of husband for payment of funds provided by wife's mother and the wife amongst the children.

Period of vesting.

Issue of predeceasing child to take said child's share.

Collation in the event of any sum left unappointed.

shall the share of a child to whom a share has been appointed be less in consequence of such collation than the original share appointed; AND DECLARING that it shall be in the power of the said trustees during the minority of the said children to employ the income of each child's prospective share or so much thereof as may be necessary, of which the said trustees shall be the sole judges in maintaining and educating such child; AND ALSO even during the lifetime of the first and second parties, with their consent or the consent of the survivor, to advance a portion not exceeding one-half of any child's prospective share of capital for the advancement in life or otherwise for the benefit of such child, notwithstanding that the said prospective share may not have vested, and which advance shall be free of interest.

Power to trustees to employ the income for children's maintenance and education.

Power to advance capital for the advancement in life or benefit of the children.

(Fifth) In the event of the first party being the survivor and of there being no child of the marriage, or of such child or children, and their issue, if any, all dying before acquiring a vested interest, then the capital of the funds provided and settled by the second party shall revert and belong and be transferred and conveyed to such person or persons as the second party shall direct under any will or testamentary writing executed by her; AND FAILING such direction, then to such person or persons as would have been entitled to her moveable estate had she died intestate and unmarried. (Sixth) In the event of the second party being the survivor, and of there being no child or children of the marriage, or issue of such child or children alive at the death of the first party; or of there being a child or children of the marriage or issue of any such child or children alive at the date of the death of the first party, but such child or children or issue all dying before acquiring a vested interest, then in either of these events the capital of the funds provided and settled by the fourth and second party shall REVERT and BELONG and be CONVEYED to the second party, whom failing to such person or persons as she may direct under any will or testamentary writing executed by her, and failing such direction, to such person or persons as would have been entitled to her moveable estate had she died intestate and unmarried: AND FURTHER CONSIDERING that under the Trust-Disposition and Settlement of

(5) After wife's death, and if no child or issue of a child is alive at that date or at date of remarriage of husband, capital to be conveyed as wife may direct, and failing direction, to her next-of-kin.

(6) If wife is the survivor and no child or issue acquires a vested interest, capital to revert to wife.

, her father, dated  
 , and registered in the Books of Council and Session  
 , the second party is entitled on her attaining the age of  
 twenty-five years to have conveyed to her the said estate of  
 , in the county of , the second party hereby

Obligation  
by wife to  
convey land-  
ed estate  
to trustees.

Purposes of  
such con-  
veyance.

(1) For pay-  
ment of in-  
come to  
wife.

(2) After  
wife's death  
for payment  
of income to  
husband.

Husband  
bound to  
maintain  
and educate  
children.

(3) Upon  
the death of  
the survivor  
or re-mar-  
riage of hus-  
band, estate  
to be con-  
veyed to  
children as  
wife directs.

Period of  
vesting.

BINDS and OBLIGES herself as soon as she is entitled to the conveyance of the said estate of \_\_\_\_\_, to convey, or cause to be conveyed to the said trustees herein named and their foresaids, the said estate of \_\_\_\_\_, which estate shall be held by the said trustees and their foresaids for the following purposes:—*vide licet*—(First) After paying all annual outgoings and annual encumbrances thereon, for payment of the income to the second party during all the days of her life for her own alimentary use allenary, exclusive of the right of administration of the first party; AND DECLARING that the same shall not be affectable by his debts or deeds, or attachable by his creditors, and that her own receipts for payments of said income shall be sufficient discharges therefor, said liferent being subject always to be terminated in the events provided for by the after-mentioned fifth purpose hereof. (Second) In the event of the second party predeceasing the first party, for payment to the first party of the income of the said estate of \_\_\_\_\_ after payment of all annual outgoings and annual encumbrances during all the days of his life so long as he shall remain unmarried, for his own alimentary use allenary: AND DECLARING that the same shall not be affectable by his debts or deeds, or attachable by his creditors, but shall be to him an alimentary provision allenary: BUT DECLARING that out of said income the first party shall be bound to maintain and educate according to their station in life the sons to be born of the marriage until they respectively attain twenty-one years, and the daughters to be born of the marriage until they are married respectively, whether that event happens before or after the age of twenty-one, unless the said sons and daughters are otherwise provided for, of which the said trustees shall be the sole judges. (Third) Upon the death of the survivor of the first and second parties, or upon the second marriage of the first party, the said trustees shall convey the said estate of \_\_\_\_\_ to such child or children of the marriage at such times and under such conditions as the second party shall direct by any writing under her hand: BUT DECLARING that notwithstanding any time which the said second party may fix for the said conveyance to be made, vesting shall take place in the child or children to whom the said estate of \_\_\_\_\_ is directed to be conveyed, on the death of the survivor of the first and second parties, or on the second marriage of the first party, and in the case of sons on their attaining twenty-one years of age, and in the case of

daughters on their attaining that age or being married ; and failing a deed of appointment by the second party, the said estate of

shall be conveyed to the eldest son who shall survive and acquire a vested interest, and failing sons surviving, then to the eldest daughter who shall survive and acquire a vested interest (*or otherwise as may be desired*). (*Fourth*) In the event of the first

party being the survivor and of there being no child of the marriage, or of such child or children and their issue, if any, all dying before acquiring a vested interest, then the estate of

shall at the date of the death or second marriage of the first party be conveyed to such person as the second party shall direct by any will or testamentary writing executed by her, and failing such direction, then to such person or persons as would have been entitled to her heritable estate had she died intestate and unmarried. (*Fifth*)

In the event of the second party being the survivor, and of there being no child or children of the marriage or issue of such child or children alive at the death of the first party, or of there being a child or children of the marriage or issue of such child or children alive at the date of the death of the first party, but such child or children or issue all dying without acquiring a vested interest in the said estate of , then the said estate of shall revert and

belong and be CONVEYED and DISPOSED to the second party, whom failing to such person or persons as she may direct by any will or testamentary writing executed by her, and failing such direction, then to such person or persons as would have been entitled to her heritable estate had she died intestate and unmarried: AND the first

party hereby RENOUNCES his right of administration over all the property and effects presently belonging to the second party, or which she may afterwards succeed to or acquire, whether falling under the trust hereby created or not, and homologates the before written disposal of the said sum of £ , the funds CONVEYED and SETTLED by the second party, and the estate of , as in full

of all his legal rights over her estate both heritable and moveable, and hereby discharges all right of courtesy or other claim competent to him over any heritable estate of which she may die possessed, and also all claims competent to him, whether conferred by the "Married Women's Property (Scotland) Act, 1881," or any statutory modification thereof or otherwise, whether by statute or at common law over any estate presently belonging to her or of which she may die

(4) After wife's death, if no child or issue of a child is alive at that date or at date of re-marriage of husband, estate to be conveyed as wife may direct, and failing direction, to her nearest heir.

(5) If wife is the survivor, and no child or issue acquires a vested interest, estate to revert to wife.

Discharge of husband's legal rights.

Power to spouses to restrict children's right to a liferent.

possessed: AND it is hereby DECLARED that it shall be in the power of the first and second parties and the survivor of them in any deed of appointment of any of the before settled funds or estate amongst the children of the marriage to restrict the share of any child to a liferent if they or the survivor of them consider that expedient:

Powers of trustees.

AND it is hereby FURTHER PROVIDED and DECLARED that the trustees acting for the time in the execution of the trust hereby created shall have and possess all the powers, privileges, and immunities conferred on gratuitous trustees by the Acts of Parliament already passed or to be passed in their favour, and specially without prejudice to such powers, the said trustees shall have and they are hereby invested with the fullest powers of administration and management of the estate, property, and effects falling or that may fall under the trust, and they shall have full power to complete all proper titles in their persons to the estate, property, and effects hereinbefore conveyed, or agreed to be conveyed to them, and to the investments and securities of the funds, and at their discretion to uplift, sell, or otherwise realise, and, if necessary, sue for and recover the same and the investments and securities and prices and proceeds thereof and the interest and other income and profits arising there-

Parties to execute all deeds necessary for vesting the trustees in trust-estate.

from: AND it is hereby DECLARED that the first, second, third, and fourth parties shall be BOUND, as they hereby BIND and OBLIGE themselves and their respective heirs, executors, and successors, to grant all necessary deeds and writings in favour of the trustees hereinbefore appointed for vesting them in the trust-estate hereby CONVEYED, or AGREED to be CONVEYED, and for implementing and fulfilling the purposes of the trusts before written: AND it is hereby AGREED and DECLARED, that during the lifetime of the third party it shall not be in the power of the third party to pay off the said bond and disposition in security for £                      over the lands and estate of                      ; AND ALSO that during the lifetime of the third

Husband's father not to pay off sum in bond and disposition in security during the latter's lifetime.

party it shall not be in the power of the trustees acting under these presents to call upon the third party to pay up the amount of the said bond so long as the interest thereon is regularly paid. [The further clauses may be as in the preceding style.]

Trustees not to call upon husband's father during his lifetime to pay up sum in said bond and disposition in security.

**4. Contract of Marriage, where the Husband makes Provision for Wife and Family by Life Insurance, and where the Wife's Property is Conveyed to Herself.**

IT IS CONTRACTED, AGREED, and MATRIMONIALY ENDED betwixt <sup>(1) Induc-</sup>  
A, *on the one part*, and B, eldest daughter of E, *on the other part*, as <sup>tive clause.</sup>  
follows: THAT IS TO SAY, the said A and B have agreed to accept,  
and hereby accept, of each other for lawful spouses, and BIND and  
OBLIGE themselves to solemnise their marriage with all convenient  
speed: IN CONTEMPLATION OF which marriage the said A hereby  
ASSIGNS, DISPONES, and MAKES OVER to and in favour of L, M, and  
N, and the acceptors or acceptor, survivors or survivor, of them as  
trustees. *(First)* ALL AND WHOLE his whole household furniture, <sup>(2) Pro-</sup>  
linen, plate, plenishing, articles of vertu, books, and pictures presently <sup>vision of</sup>  
belonging to him in and about that dwelling-house, <sup>furniture</sup>  
<sup>to spouses</sup>  
<sup>in conjunct</sup>  
<sup>liferent, and</sup>  
<sup>to the sur-</sup>  
<sup>vivor in</sup>  
<sup>fee.</sup>  
Edinburgh, conform to inventory annexed and  
signed as relative hereto, but in trust always for the conjunct liferent  
of the said A and B, and for the survivor absolutely in fee. *(Second)* <sup>(3) Assig-</sup>  
A certificate or policy of assurance on the life of the said A with <sup>nation by</sup>  
the Assurance Society for the sum <sup>husband of</sup>  
of £ , number , dated , <sup>insurance</sup>  
<sup>policies in</sup>  
<sup>trust for</sup>  
<sup>the wife in</sup>  
<sup>liferent,</sup>  
<sup>and for the</sup>  
<sup>issue, whom</sup>  
<sup>falling, the</sup>  
<sup>survivor in</sup>  
<sup>fee.</sup>  
with all bonus additions thereon. And *(Third)* a certificate or  
policy on the life of the said A with the Assur-  
ance Society, for the sum of £ , number ,  
dated , with all bonus additions thereon, which two  
policies of assurance shall be held in trust by the said L, M, and N,  
and the survivors and survivor of them, for the liferent use of the  
said B, and the children of the marriage, if any, in fee: AND in the  
event of there being no children born of the marriage [*or say*, in the  
event of there being either no children born of the marriage, or of  
there being no children, or issue of children, alive at the dissolution  
of the marriage by the death of either of the spouses], then the  
said L, M, and N, and their foresaids, shall convey the proceeds of  
said policies of assurance to the said B, absolutely in fee in the  
event of her surviving the said A: AND in the event of the said B  
predeceasing the said A without issue, then the said L, M, and N,  
and their foresaids, shall reconvey the said policies of assurance to  
the said A: AND the said A hereby BINDS and OBLIGES himself to

make payment of the annual premiums necessary to keep the said policies of assurance in force, and to make such further provision for his wife and family as his circumstances will from time to time permit of, but of which he shall be the sole judge, either by increased life assurance or otherwise: FOR WHICH CAUSES, AND ON THE OTHER PART, the said B hereby ASSIGNS and DISPONES, to and in favour of herself, for her own absolute behoof, and to be disposed of after her death as she may appoint by any writing under her hand, ALL AND WHOLE her whole means and estate, heritable and moveable, real and personal, presently belonging, or which shall belong and pertain to her during the subsistence of the marriage, and that exclusive of the right of administration of the said A, which he hereby renounces: (a) AND both parties consent to registration hereof for preservation and execution.— IN WITNESS WHEREOF.

(4) Conveyance by wife of her estate to herself absolutely.

**5. Contract of Marriage, where the Estate of each Spouse is conveyed to the same Trustees, but with separate Purposes.**

Inductive clause.

IT is MATRIMONIALLY CONTRACTED and AGREED between the parties following—viz., A (*designation*), on the one part, and B (*name*), daughter of E (*designation*), with the special advice and consent of her said father, and the said E for himself, on the other part: THAT IS TO SAY, the said A and B have agreed to accept, and hereby accept, of each other as lawful spouses, and bind themselves to solemnise their marriage with all convenient speed: IN

Conveyance of husband's estate to trustees.

CONTEMPLATION OF which marriage the said A DISPONES and CONVEYS to and in favour of L, M, and N (*name and design trustees in usual form*), as trustees for the purposes aftermentioned, and to the acceptors or acceptor, and survivors or survivor of them, and to the heir-male of the last survivor (a majority in Great Britain for the time being a quorum, and the said trustees and their foresaids being throughout these presents denominated "the said trustees"): ALL AND WHOLE (*here describe or validly refer to the heritable subjects in usual form*), AND the said A's whole

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(a) It will be observed that in this form the legal rights of neither of the spouses in the estate of the predeceasing spouse are discharged.

right, title, and interest present and future therein: AND the said A assigns the rents; AND the said A assigns the writs [*if part of the estate to be conveyed consists of heritable or other securities here add*]: AND FURTHER, the said A BINDS and OBLIGES himself of even date with his subscription to this contract to assign to the said trustees the following Bonds and Dispositions in Security (*describe these shortly*): DECLARING that the said trustees shall hold the estate hereby conveyed in trust only, for the purposes, and with and under the powers, conditions, and declarations after specified, viz.:—

(*Primo*), For payment to the said A during his life, and after his death to the said B if she shall survive him, of the free annual income or revenue thereof, after payment of the expenses of the trust, for the liferent use allenary of them and the survivor of them: DECLARING that the same shall be alimentary, and shall not be affectable by the debts or deeds of either of them, or the diligence of their creditors. (*Secundo*) For behoof of the child or children of the present marriage, in fee, divisible among them in such proportions, and payable at such times, and in such manner, as the said A shall appoint, by any writing under his hand, and, in case of no such appointment, for the said children equally, share and share alike: DECLARING that the fee shall vest in the sons on their attaining majority, and in the daughters on their attaining majority or being married, whichever of these events shall first happen, (*a*) and that the lawful issue of children predeceasing the period of vesting shall take the share or shares, original and accruing, which would have fallen to their parent had he or she survived. (*Tertio*) In the event of the said A surviving his said intended spouse, and there being no children of the said intended marriage, or of all the children dying, in the case of sons, without attaining majority and without leaving issue, or in the case of daughters, without attaining said age or being married, the said trustees shall RECONVEY to the said A the whole trust-estate hereinbefore conveyed or agreed to be conveyed by him. (*Quarto*) In the event of the said B surviving the said A, and of there being no children of the marriage, or of all the children dying, in the case of sons, without attaining majority and without leaving issue, or in the case of daughters, without attaining said age

Obligation to assign heritable securities.

Purposes of husband's trust.

(1) Liferent to spouses and survivor.

(2) Fee to children on majority or marriage.

(3) If no children, fee to husband on his surviving.

(4) If no children, and wife survives, fee on her death to go to husband's appointees, whom failing, his heirs.

(a) The effect of this declaration is to vest the shares in the children on majority (or marriage), although both parents may be alive.

or being married, the said trustees shall, on the death of the said B, or on the death of all of the children and their issue, whichever event shall last happen, pay and convey the said whole trust-estate to such person or persons as the said A shall appoint by any will or testamentary writing executed by him, and failing such appointment, then to such person or persons as would have been entitled to the same had he died intestate and unmarried. (*Provisions as to furniture, &c., which may be taken from the preceding*

Conveyance  
by wife of  
her estate  
to trustees.

*forms, will here follow*): FOR WHICH CAUSES, AND ON THE OTHER PART, the said B, with advice and consent foresaid, hereby DISPONES and CONVEYS to and in favour of the said L, M, and N (*here repeat destination, clause providing quorum, and short title*), ALL AND SUNDRY the whole means and estate, heritable and moveable, real and personal, wherever situated, now belonging to her, or to which she may acquire right during the subsistence of said intended marriage (but excepting from this conveyance all legacies or gifts not exceeding the sum of £                      sterling each,

Excepting  
legacies or  
gifts of  
certain  
amount,  
&c.

which may be bequeathed or given to her, and also excepting her *paraphernalia* and the provisions hereinbefore made in her favour by the said A, all of which are hereby reserved to herself alone, and from which her husband's right of administration and whole legal rights are expressly excluded and hereby renounced by him), together with the whole rights, titles, and vouchers of the means and estate hereby conveyed: DECLARING that the said trustees shall hold the same means and estate in trust only, for the purposes, and with and under the powers, conditions, and declarations after specified, viz. :—

Purposes  
of wife's  
trust.

(1) Liferent  
to wife.

(*Primo*) For payment to the said B, during all the days of her life, of the free annual income or revenue thereof, after payment of the expenses of the trust, for her liferent use alienably, exclusive of the right of administration of the said A, and in the event of the said B predeceasing the said A, for payment to him during all the days of his life after her death, of the said free income or revenue, for his liferent use alienably: DECLARING that said free annual income shall be alimentary, and shall not be affectable by the debts or deeds of either of them, or the diligence of their creditors. (*Secundo*) (*Will be similar to the second purpose of the*

(2) Fee to  
children on  
majority.

*trust relating to the funds derived from the husband, the power of apportionment in this case, however, being given to the wife*). (*Tertio*) In the event of the said B surviving her said intended

spouse (*Will be the same as in the third purpose of the husband's trust, save that the trustees will be directed to convey to B*). (3) If no children, capital to be paid to wife if she survive.  
*(Quarto)* In the event of the said A surviving the said B (*Will be the same as in the fourth purpose of the husband's trust, mutatis mutandis*): WITH POWER, after the death of the survivor of said spouses, to the said trustees to apply the annual revenue of the means and estate hereby conveyed by the spouses, or either of them, for the maintenance, education, and support during minority of the children entitled to the fee thereof, or any of them, and the survivors and survivor, and their issue, and if they see fit, to advance the shares of the said trust funds to which any of the said children may prospectively be entitled, or any part thereof, for their outfit and advancement in life. *[Here insert clauses (as in preceding forms) excluding wife's and children's legal rights, and declaring the powers conferred on the trustees.]*—IN WITNESS WHEREOF, &c. (4) If no children, and husband is survivor, capital on his death to wife's heirs. Power to trustees to apply income and advance capital.

## 6. Clauses declaring Trusts of Husband's Funds.

*(Primo)* For payment of the clear annual income and revenue thereof to the said B (*the wife*) during her life, for her sole and separate alimentary liferent use only, independent and exclusive of the right of administration of the said A (*the husband*), and of his debts and control, and so that her receipts alone shall be discharges for the same, and that she shall not have power to dispose or deprive herself of the benefit thereof by anticipation: THE said clear annual income and revenue being hereby declared not to be affectable by the debts or deeds of either of the said spouses, or the diligence of their creditors. *(Secundo)* In the event of the said A surviving the said B for payment of said clear annual income to him during his survivance, or until he shall become bankrupt or insolvent, or take the benefit of any Act passed or to be passed for the relief of insolvent debtors, for his alimentary liferent use only, and he shall not have power to dispose or deprive himself of the benefit thereof by anticipation, the same being hereby declared not to be affectable by his debts or deeds, or the diligence of his creditors. *(Tertio)* After the death of the survivor of the said A and B, or the bankruptcy or insolvency of the said A, should he be (1) Income to wife. (2) If husband survivor, income to him during his life or solvency. (3) On his death or insolvency, fee to children.

the survivor, or whichever event shall first occur, for behoof of the child, &c.

**7. Contract of Marriage in which the Children's Provisions are secured by a Bond to Trustees for their behoof, and Disposition in Security over lands belonging to the husband.**

After the destination of the estate, and provisions in favour of the wife, the contract will proceed :—

Personal  
obligation  
by husband  
for child-  
ren's pro-  
vision.

Disposition  
in Security.

AND FURTHER, the said A hereby BINDS and OBLIGES himself and his successors in the said lands and estate, and *subsidiarie* his heirs, successors, and representatives whomsoever, to make payment at the first term of Whitsunday or Martinmas which shall happen after his death, to L, M, and N (*here insert the names and designations of the trustees*), and to such other person or persons as may be assumed to act in the trust hereby created, and to the survivors and survivor, acceptors and acceptor of them, the majority of the surviving and accepting trustees, original and assumed, in Great Britain for the time, being always a quorum (the whole of the foresaid trustees and their quorum being throughout these presents designed and referred to as "the said trustees"), but in trust always for the ends, uses, and purposes after-written, and to the assignees of the said trustees, the sum of £                    sterling, with a fifth part more of liquidate penalty in case of failure, and the interest of the said principal sum at the rate of five pounds per centum per annum, from the said term of payment, and half-yearly, termly, and proportionally thereafter at two terms in the year, Whitsunday and Martinmas, during the not-payment of the same, with a fifth part more of the interest due at each term of liquidate penalty in case of failure in the punctual payment thereof: AND IN SECURITY of the personal obligation before-written, the said A hereby DISPONES to and in favour of the said trustees and their foresaids, heritably but redeemably as after-mentioned, yet irredeemably in the event of a sale by virtue hereof ALL AND WHOLE (*here describe or validly refer to the lands, or if already described in the Contract, refer to them as so described; with real burdens, conditions, &c., already constituted, if any, and add the executive clauses as in the form of an*

*ordinary Bond and Disposition in Security*): BUT DECLARING Purposes of trust. ALWAYS that the said trustees shall hold and apply the fore-said principal sum of £ , or any securities, funds, or subjects upon which the same may be invested, or which may be acquired in lieu thereof, in terms of the powers hereinafter conferred on them, and the interest or annual proceeds of the same for the purposes following, viz.:—*(First)* For payment of the expenses of the trust (1) Payment of expenses of trust. hereby created. *(Second)* The said trustees shall apply the clear (2) Application of revenue to maintenance of children. annual interest and proceeds of the trust funds or property towards the maintenance, education, and outfit of the child or children of the said intended marriage who shall survive the said A (other than the child who shall then be entitled to succeed to the said lands and estate) until the child, or, if there be more than one child, the youngest surviving child, shall attain majority, or if a daughter shall be married: DECLARING that it shall be in the power and option Power to apply capital to same purpose. of the said trustees in the event of said annual interest and proceeds not being sufficient, to expend and apply the capital in whole or in part for said purpose, as to which the said trustees shall be the sole judges. *(Third)* Upon the youngest or only *(a)* surviving child, (3) Capital to be paid to children on youngest attaining majority. entitled to participate in said provision attaining majority, or, if a daughter, being married as aforesaid, the said trustees shall realise the trust funds, or any property upon which the same may be invested, and pay the same, or the residue thereof, to said only child or divide the same among said children in such shares or proportions as their parents or the survivor of them may appoint by any writing under their, his, or her hand, and failing such appointment, equally between them: AND in the event of any Issue of pre-deceasing child entitled to parent's share. of said children dying before the said period of payment leaving lawful issue, such issue shall be entitled equally among them to the share to which their parent would have been entitled if alive; AND in the event of any of such children dying before the said period of payment without leaving lawful issue, his or her share in the trust funds, or residue thereof, so far as not anticipated or paid, shall fall to and be divided equally, *per stirpes*, among the survivors or survivor of said children, and the lawful issue of any of them who may have predeceased leaving issue, such

(a) See *Mailand's Trs. v. M'Diarmid*, 1861, 23 D. 732, and *Laurie's Trs. v. Laurie*, 1905, 7 F. 910.

Shares of female children to be exclusive of *ius mariti*, &c., of husbands.

If no children or issue entitled to participate, trustees to discharge provision if required.

Powers of trustees.

issue being entitled equally among them to the proportion of such accruing share to which their parent would have been entitled if alive, in the same manner as is hereinbefore provided with reference to such parents' original share: DECLARING that the whole provisions hereby made, so far as in favour of or descending upon females, shall be exclusive of the right of administration of any husbands they may marry, and shall not be affectable by the debts or deeds of such husbands, or the diligence of their creditors: AND FURTHER DECLARING that if there shall be no children of the said intended marriage, or no children other than the heir entitled at the time to succeed to the said entailed lands and estate, or if the whole children entitled to participate in said provision shall die before attaining majority or marrying as aforesaid or before the said A, without leaving lawful issue, then the said trustees shall be entitled and bound, if so required by the heir in possession for the time, or entitled to succeed to the said A in the said lands and estate, to execute a discharge or discharges of the foregoing provision, and to disburden thereof the whole of the foregoing lands and others hereby disposed in security: AND for carrying out the purposes of the trust hereby constituted, the said A hereby declares that the said trustees shall have power at any time after the term of payment of the said principal sum, to call up and invest the same in or upon all or any of the subjects or securities following, in addition to any other subjects or securities in which by law trustees now have or may hereafter obtain power to invest trust funds, viz. :—[*Here insert provision as to investments and the clauses declaring the powers conferred on the trustees.*]

In this form it is assumed that the estate thus burdened with a provision for the younger children has been destined to the heir of the marriage. Where no such destination of the estate has been made, the trustees will be directed to apply the provisions for the benefit of the whole children of the marriage, with a declaration that the child succeeding to the estate by any disposition or settlement of the father, or by operation of law, shall be bound, on his so succeeding, to renounce his share of the provision, which shall thereupon, as the parties may desire, either accresce to the remaining child or children, or go to diminish the total amount with which the estate is thus burdened. In the case of a destination of the estate to the heir of the marriage, power may also be reserved to burden it with an addition to the provision settled for behoof of the younger children.

The bond in favour of the trustees instead of being incorporated with the contract may be executed separately, and in that case the reference to

it in the contract, preliminary to the introduction of the trust purposes, may be as follows:—

AND WHEREAS the said A has of even date with the execution of these presents granted a Bond and Disposition in Security over said lands and estate for the sum of £                      sterling, payable at the first term of Whitsunday or Martinmas after his death, with interest and penalties as therein mentioned, in favour of (*here insert the names and designations of the trustees*), and the survivors and survivor, acceptors and acceptor of them, the majority of the surviving and accepting trustees, original and assumed, in Great Britain for the time being always a quorum (the whole of the foresaid trustees and their quorum being hereinafter designed and referred to as "the said trustees"); but in trust always for the ends, uses, and purposes, to be herein set forth with regard to said sum: THEREFORE it is hereby DECLARED that the said trustees shall hold and apply the foresaid principal sum of £                      , or any other securities, funds, or subjects upon which the same may be invested, or which may be acquired in lieu thereof, in terms of the powers hereinafter conferred on them, and the interest or annual proceeds of the same, for the purposes following, viz.:—(*here insert the trust purposes as before*).

**8. Contract of Marriage, with Conveyance to Trustees, where the Husband's Estate consists in part of Heritable Securities, where the Wife's Property is not yet realised, and where the Children are to share equally in their Parents' Means.**

IT is MATRIMONIALY CONTRACTED and AGREED between the parties following, viz.:—A (*designation*), of the first part, and B (*full name*), daughter of E (*designation*), with the special advice and consent of her said father, and the said E for himself, and as taking burden on him for his said daughter, of the second part, in manner following: THAT IS TO SAY, the said A and B have accepted and hereby accept of each other for lawful spouses, and promise to solemnise their marriage in proper form with all convenient speed: IN CONTEMPLATION of which marriage the said A hereby ASSIGNS and CONVEYS, [*Here take in, if desired, the provisions of furniture*

Obligation  
to provide  
for widow  
and child-  
ren.

To pay capi-  
tal sum to  
trustees.

Purposes:  
Income to  
wife during  
her life.

Restriction  
in event of  
widow's  
second  
marriage.

*and of mournings and interim aliment given in style 1*): AND FURTHER, the said A BINDS and OBLIGES himself TO SETTLE and SECURE the sum of £                      sterling for behoof of the said B and the child or children to be born of said intended marriage for their respective interests as after-mentioned, and for that end to pay to L, M, and N (*name and design trustees*), as trustees, and the acceptors or acceptor, and survivors and last survivor of them, and such other person or persons as may be assumed to act in the trust hereby constituted, and to the heir-male of the last surviving acceptor, the majority of the trustees alive and accepting and resident within Great Britain for the time being always a quorum (the whole of said trustees and their foresaids or quorum being throughout these presents denominated "the said trustees"), in trust, for the ends uses, and purposes, and with and under the powers, conditions, and declarations after written, the sum of £                      sterling at the first term of Whitsunday or Martinmas which shall happen six months after the death of him the said A, with interest at the rate of five pounds per centum per annum from the said term till payment: AND it is hereby DECLARED that in the event of the said A predeceasing the said B, the said trustees shall pay to her the annual interest and revenue that shall arise upon the said sum of £                      from and after the date when said sum shall become payable, and during her life, but under the burden and condition always of providing suitable aliment and education for the child or children to be born of the said intended marriage, in so far as the same shall not be satisfied by the provisions in their favour hereinafter specified: AND ALSO with this condition, that in the event of the said B entering into a second marriage, and of there being a child or children of the present marriage or their lawful issue then alive, the liferent right before given shall be restricted to the extent of one-half, and that one-half of the before-mentioned capital sum of £                      and the revenue arising therefrom shall be held and applied as after-mentioned by the said trustees for behoof of said child or children and their issue, or paid over to other trustees for their behoof, who shall hold and apply the same for their behoof in the manner hereinafter provided with regard to the means derived through the said B: AND on the death of the survivor of the said A and B, and in the event of there being one or more children of the said intended marriage, or their lawful issue, then alive, the said

trustees shall apply the interest or annual proceeds of said sum of £ (or half thereof, if such amount only shall be then in their hands), for behoof of said child or children or their said issue, until their majority or marriage as after-mentioned, and they shall hold the fee or capital thereof for behoof of such child or children and their said issue, and pay over the same at the time and in the manner hereinafter provided with regard to the means derived through the said B: AND IN SECURITY of the before-written provisions the said A hereby ASSIGNS, DISPONES, and CONVEYS, and BINDS and OBLIGES himself to assign, dispo<sup>n</sup>e, and convey by separate deeds if necessary, to the said L, M, and N, as trustees foresaid and their assignees (*In the First place*) a Bond and Disposition in Security dated the                      day of                      , and recorded as after-mentioned, for the sum of £                      sterling, granted by O (*designation*) in favour of the said A, with interest from the                      day of                      : AND ALSO ALL AND WHOLE (*here describe or validly refer to the lands contained in the Bond and Disposition in Security, and real burdens, conditions, &c., already constituted, if any*), all as specified and described in the said Bond and Disposition in Security, which is recorded in (*specify Register of Sasines in which the Bond is recorded*) on the                      day of                      , 19                      : AND (*In the Second place*) ALL AND WHOLE a Certificate or Policy of Assurance effected on the life of him the said A, with the                      Insurance Company, numbered                      and dated                      , for the sum of £                      sterling, with the whole sums therein contained or to become due and payable under the same, and whole consequents thereof, with full power to the said trustees to uplift, receive, and discharge or assign the same, or any part thereof, and to grant all writings necessary or proper in the premises: AND the said A hereby BINDS and OBLIGES himself strictly to observe and fulfil the whole terms and conditions necessary to keep the said policy in force, and for that purpose duly and punctually to pay the annual premium (and additional premium if any) thereof, during his life, and to exhibit the receipts to the said trustees when required, within one month from the time when the same shall be payable: DECLARING that in the event of said payments not being duly made, the said trustees shall have right but shall not be bound to pay said premiums or additional premiums out of the funds under their charge, or them-

Conveyance to trustees of heritable security, and policy on husband's life in security.

Husband to keep policy in force.

Renunciation by him of right of administration.

Provisions in favour of widow to be over and above annuity, &c.

Acceptance by wife of provisions in her favour.

Obligation by husband to maintain and educate children.

Settlement of the lady's estate. Conveyance to trustees.

Obligation by father of lady.

selves to advance the same and charge the said A with the amount of such advances, and interest thereon at 5 per cent. per annum till repaid: AND the said A hereby RENOUNCES and DISCHARGES his right of administration in relation to the whole estate and effects now owing and belonging, or which may be owing and belonging to the said B during the subsistence of the present marriage, and provides and declares that the same shall be and remain a separate estate in her person, or in the person of such trustees or others as she may appoint: AND the said A further declares that the provisions hereby made in favour of the said B are over and above any annuity to which she may become entitled as his widow if she survive him: WHICH PROVISIONS the said B hereby accepts in full satisfaction of all terce of lands, legal share of moveables, and every other thing that she *jure relictae* or otherwise could ask or claim from the said A, his heirs, or representatives whomsoever: MOREOVER, the said A hereby BINDS and OBLIGES himself, and his heirs, executors, and representatives whomsoever, to maintain and educate the child or children to be born of said intended marriage in a manner suitable to their station in life, until the sons attain majority, and the daughters attain majority or be married, or until the provisions in their favour contained in this Contract shall become payable: FOR WHICH CAUSES, AND ON THE OTHER PART, the said B, with the special advice and consent of the said E, hereby ASSIGNS and DISPONES, and BINDS and OBLIGES herself to assign, dispo,ne, and make over, by separate deeds, if necessary, to and in favour of the said L, M, and N, as trustees (*repeat destination, &c., as on p. 738*), ALL AND SUNDRY the whole property and effects, heritable and moveable, real and personal, now belonging to her, or which shall pertain and become owing to her during the subsistence of said intended marriage (*If, for any reason, a special conveyance be desired, this may be added, as in Form 1*): AND THE SAID E hereby BINDS and OBLIGES HIMSELF, his heirs, executors, and successors whomsoever, within six months after his death, or as soon thereafter as his means and estate can be conveniently realised and divided, to pay to the said trustees an equal share with his remaining children (*or as may be desired*) of the means and estate which shall be left by him or which shall then become payable, and to grant at the expense of the present trust all deeds or writings which may be

necessary to implement this obligation: BUT DECLARING ALWAYS, as it is hereby PROVIDED and DECLARED, that the means and estate of the said B hereinbefore assigned shall be held by the said trustees in trust for the uses and purposes, and with and under the powers, conditions, and declarations after specified, viz.:—*(First)* The said trustees, after meeting the expenses of the present trust, shall, during the subsistence of said intended marriage, pay to the said B out of the readiest income of said means and estate so soon as the same shall come into their hands, the sum of £ sterling yearly for her own private use, free from the right of administration or otherwise of her said husband, for which sum the receipt of the said B herself shall be a sufficient discharge. *(Second)* The said trustees shall pay over to the spouses and the survivor of them the remainder of said income for the alimentary liferent use alienably of themselves and the survivor, subject always to restriction as after-mentioned; AND DECLARING that in the event of the insolvency or bankruptcy of the said A, the whole of said income shall be payable to the said B on her sole receipt, free from the debts, engagements, and control, and exclusive of the right of administration or otherwise of her said husband, and the said trustees shall hold the fee or capital of said estate for behoof of and shall pay the same to such child or children as shall be alive at the death of the longest liver of the spouses, and shall, being sons, attain majority, or, being daughters, shall attain majority or marry (whichever of these events shall first happen), jointly with the issue *per stirpes* of any child or children who shall not be then alive or shall die without attaining majority: DECLARING that said provisions in favour of children and their issue shall not (except in the case after-mentioned) become vested interests until the terms of payment above-mentioned. *(Third)* After the death of either of said spouses, in the event of the survivor entering into a subsequent marriage while a child or children of the present marriage or their lawful issue survive, the alimentary liferent immediately hereinbefore provided in favour of said spouse shall forthwith be restricted to the extent of one-half, and the capital sums contributed or to be contributed by or on behalf of the said B, and revenue arising therefrom, shall, to the extent of one-half, forthwith be held and applied directly by the said trustees for behoof of said child or children and their lawful issue, or paid over to trustees for their behoof, who shall

Purposes of trust.

(1) Payment of trust expenses and wife's pin money.

(2) Remaining income to be paid to spouses.

Trustees to hold fee for children.

Term of vesting.

(3) In case of subsequent marriage while children of present survive. Restriction of liferent.

Payment to children of one-half of capital in certain events.

hold and apply the same for these purposes: DECLARING that the annual income shall be applied, at the discretion of the trustees, for the education and aliment of such child or children and issue, until they attain majority if sons, and if daughters, until they attain majority or be married, whichever of these events shall first happen; and on their attaining majority, if sons, and if daughters, on their attaining majority or being married, the capital of such half, and also of the provision before-mentioned, made in such event by the said A, shall, notwithstanding the provisions above written, be payable to them respectively and without awaiting the decease of their surviving parent, and in the event of any child dying before acquiring a vested interest therein leaving issue, the share, original and accruing, to which he would have been entitled, shall be paid to such issue or their guardians.

(4) Whole children to share equally.

(Fourth) It is hereby PROVIDED and DECLARED that the whole children to be born of the present marriage shall be entitled to share equally in the fee of the means and estate contributed by or on behalf of both parents, and that the lawful issue of such child or children as may have predeceased the terms of payment above specified, shall in all cases be entitled to receive equally among them

Issue of predeceasing children to receive equally among them their parent's share.

Shares of minor issue of children to be paid to guardians.

Power to trustees to advance portion of capital.

the share or shares, both original and accreasing, which would have fallen to their deceased parent had he or she survived and attained majority as aforesaid, and that the shares of the whole provisions under these presents falling to such of the issue of said child or children as may be in minority shall be payable to his or her legal guardians: WITH POWER to the said trustees to advance such portions of the trust capital as they may think proper for the education or outfit in life of any of said children or their issue, notwithstanding that the term of payment of such child's share may not have arrived, provided always that during the lifetime of the said A and B or the survivor of them, their, his, or her consent to such advance shall be first obtained in writing: AND it is further hereby PROVIDED and DECLARED that the whole provisions in this contract conceived in favour of females shall be exclusive of the right of administration of husbands, and of the debts and deeds of such husbands, or of any diligence and execution competent to follow thereon; and (Lastly) In the event of the dissolution of the present marriage by the predecease of either spouse without a child being born of the same, or in the event of a child or children existing,

Provisions to females to be exclusive of husband's rights.

but of such child or children and their issue all predeceasing the survivor of such spouses, or of such child or children dying without attaining majority or without marrying as aforesaid, and without leaving issue, the trust hereby created in reference to the means and estate of such surviving spouse shall, upon the execution by him or her of a declaration to that effect, cease and determine, and the said trustees shall, at the expense of such surviving spouse, reconvey and pay over such means and estate to him or to such person or persons as would have been his or her heirs in moveables had he or she died unmarried, or in such manner as he or she may direct. [*Here insert a clause excluding children's legitim, and clauses as to the powers of the trustees as given in the preceding forms, consent to registration, and testing clause.*]

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### SECTION III

## DEEDS SECURING PROVISIONS TO THE WIFE AND CHILDREN WHERE THERE HAS BEEN NO ANTE-NUPTIAL CONTRACT BETWEEN THE PARTIES

### 1. Marriage Articles.

Where from the circumstances of the parties, or from the state of the titles to the husband's estate (*e.g.*, where his title is not completed, or his right is the subject of litigation), it is not possible or expedient to execute a regular contract at the time of the marriage, Marriage Articles (containing an obligation to complete a title within a specified period, or an obligation to produce the title-deeds before men of business and execute settlements in terms agreed on) may be used. The following form may be used:—

IT is MATRIMONIALY CONTRACTED and AGREED between the parties following, viz.:—A (*designation*), *on the one part*, and B (*designation*), *on the other part*: THAT IS TO SAY, the said A and B have accepted each other for lawful spouses, and oblige themselves to solemnise their marriage in usual form, with all convenient speed: IN CONTEMPLATION OF which marriage the said parties have agreed upon the following Articles, and oblige themselves respectively,

within one year (*or such other time as may be deemed sufficient*) from this date, to enter into a full and articulate contract of marriage containing all usual and necessary clauses for making the said Articles effectual: AND WHICH ARTICLES so agreed upon are as follows, viz. :—

The Articles may proceed in this order :—(1) Obligation by the husband's father (*who will in such cases, of course, be a party to the Articles*) to dispoſe certain lands to the husband and the heirs of the marriage, or by the husband himſelf if in poſſeſſion of the eſtate ; (2) Obligation by the husband to complete the neceſſary title, &c. ; (3) Obligation to provide the wife in a lifeſerent annuity, and to provide an allowance for mournings and interim alimēt ; (4) Proviſion to the younger children of the marriage, and a declaration that the proviſions to the wife and children ſhall be in full of their legal claims ; (5) Obligation by the wife with reference to the ſettlement of her eſtate ; (6) Clause providing that execution ſhall paſs at the inſtance of the parties named in the Articles ; and (7) and (8) Clause of registration for preſervation and execution, and teſting clause.

## 2. Postnuptial Contract *where there are no Children of the Marriage, and where the Age of the Wife excludes the likelihood of any being born.*

### 1. Inductive Clause.

It is CONTRACTED, AGREED, and MATRIMONIALLY ENDED between A and B, his ſpouſe, on the one and on the other part, in manner following : THAT IS TO SAY, the ſaid A and B, CONSIDERING that no contract was executed and completed between them prior to their marriage, which took place on the            day of            , 19    , have, to ſupply the want thereof, RESOLVED and AGREED to execute theſe preſents in manner underwritten : THAT IS TO SAY,

### 2. Mutual Conveyance of Lifeſerent.

The ſaid A and B, for the love, favour, and affection they bear to each other, and for other good cauſes, do hereby mutually and with joint advice and conſent GIVE, GRANT, ASSIGN, and DISPONE, each of them to the other, in caſe of his or her ſurvivance, in lifeſerent

for his or her liferent use only, ALL AND SUNDRY lands and other heritable subjects, and generally the whole means and estate, heritable and moveable, real and personal, of whatever kind and wherever situated, pertaining and belonging, or due and addebted, or that shall pertain and belong or be due and addebted to them, or either of them, at the dissolution of the said marriage, excepting as after written ; with the whole writs and instructions thereof.

*3. Provision for the case of there being no Children.*

AND FURTHER, it is hereby AGREED on between the said parties, that as there is no issue of the marriage, the whole heritable and moveable property and estate before-mentioned, now belonging and due and addebted, or that may belong and be due and addebted to them, or either of them, at the death of the predeceaser, shall, at and upon the dissolution of the said marriage by the death of either of the said parties, be divided into three equal parts, subject to the liferent above provided, two whereof shall be the property of and shall fall and belong to the husband, his heirs and executors, and may be disposed of by him as he may think proper ; and the remaining third shall be the property of and shall fall and belong to the wife, her heirs and executors, and may be disposed of by her at pleasure : RESERVING ALWAYS to the survivor his or her liferent of the share descendible to the heirs, executors, or representatives of the predeceaser, in virtue of the conveyance above written : AND the said A and B DO therefore accordingly, severally, and with joint advice and consent, DISPONE and ASSIGN the whole heritable and moveable property and estate, as said is, each of them to the other, their heirs, executors, and assignees, agreeably to the proportions above-mentioned, viz.—two third parts to the said A, and his heirs, executors, and assignees, and one third part to the said B, and her heirs, executors, and assignees, reserving as aforesaid, and also excepting as after written ; with the whole dispositions and assignments, and all other writs and evidents whatever of and concerning the said heritable subjects, and whole clauses therein contained ; AND ALSO the whole bonds, bills, and other documents and instructions of the said moveable property ; and that according to the interests of the said disponees as aforesaid : WITH POWER to the survivor

of the said spouses, and to the heirs or assignees respectively of the said parties after the death of the survivor of the said spouses, to enter into possession of and intromit with, use and dispose of, uplift, and receive the shares of the premises in which they may be respectively interested in liferent and fee, as said is, and, if necessary, to pursue therefor, to grant assignations, conveyances, and discharges thereof, which shall be sufficient to the receivers, and generally to do everything else with regard to the premises disposed as aforesaid which either or both of the said spouses could have done in his, her, or their own lifetime: WHICH dispositions and assignations above written the said parties BIND and OBLIGE themselves, and their respective heirs, executors, and successors, to warrant from all facts and deeds done or to be done by either of them respectively in prejudice thereof.

#### 4. *Dispensation with Delivery.*

AND it is hereby further expressly PROVIDED and DECLARED that these presents shall be in all respects valid and effectual, although the same shall be found in the custody of the predeceaser of the said spouses at the time of his or her decease, or in the hands of any third person for the behoof of the said parties, in the same manner as if found in the survivor's custody; whereanent, and with all objections, nullities, and imperfections of any kind whatever that might be in any manner alleged against these presents, the said parties have dispensed and do hereby dispense for ever. [*Here insert an acceptance by the husband and wife of the provisions as in full of their legal claims, as in Form 1, supra, p. 705, and conclude with clause of registration and testing clause.*]

#### 3. *Mutual Declaration by Married Persons in terms of sec. 4 of the Married Women's Property (Scotland) Act, 1881.*

WE, A and B, spouses, considering that we were married on the                      day of                      , and that no antenuptial marriage settlement was entered into by us; that I, the said B, was at the date of our marriage possessed of money and securities amounting to

£ , which sum is now invested in my name as follows—viz. [*here specify*]: AND FURTHER CONSIDERING that we desire to avail ourselves of the power conferred by sec. 4 of the Married Women's Property (Scotland) Act, 1881: THEREFORE we hereby, with mutual advice and consent, DECLARE that the funds and property before-mentioned of me, the said B [*or if part only is to be brought under the Act, specify such part*], and also all other personal estate which shall hereafter be acquired by or come to belong to me, the said B, during the subsistence of said marriage, including rents of heritable estate now belonging or which may belong to me during the marriage, shall be regulated by the foresaid Act, and shall in all respects be subject to the provisions thereof: AND WE CONSENT to this deed being registered and advertised in terms of sec. 4 of the said Act.—IN WITNESS WHEREOF, &c.

**Form of Notice for Edinburgh Gazette and Local Newspapers prescribed by sec. 4 of the above Act, being in the terms of Schedule to the Act.**

Notice is hereby given that on the                      day of  
a deed by A (*designation*), and B, his wife, has been registered in  
the Register of                      in terms of the Married Women's Property  
(Scotland) Act, 1881.

A. B., W.S., *Edinburgh.*

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#### SECTION IV

### SUPPLEMENTARY DEEDS CONNECTED WITH THE SUBJECT OF THIS TITLE

#### 1. Bond of Annuity to a Lady under Treaty of Marriage, and Obligation to execute a regular Contract.

When the wife's part of the contract cannot be adjusted immediately, or when no tocher or other counterpart is to be exacted by the

husband, the following bond of annuity, containing a provision to her, and an interim settlement in her favour, may be executed.

(1) Induc-  
tive clause.

(2) Provi-  
sion of an  
annuity to  
wife after  
husband's  
death.

(3) Provi-  
sion of  
sum in lieu  
of house.

(4) Obliga-  
tion by  
husband  
to execute  
deeds for  
infesting  
wife in an  
estate in  
security of  
provisions.

I, A, CONSIDERING that a marriage is about to be contracted between me and B, eldest daughter of E; IN CONTEMPLATION OF which marriage, and until the necessary settlements be executed in valid and effectual form, I have resolved to grant these presents in her favour, in manner after written: THEREFORE I BIND and OBLIGE myself, my heirs, executors, and successors, without the necessity of discussing them in their order, in the event of the completion of the said intended marriage, to make payment to the said B, my promised spouse, of a free yearly annuity of £2000 sterling, free of all burdens and deductions whatever, and that at two terms in the year, Martinmas and Whitsunday, by equal portions and in advance, beginning the first term's payment of said annuity at the first term of Martinmas or Whitsunday which shall happen after my death for the half-year succeeding the said term, and the next term's payment of the said annuity at the next term of Whitsunday or Martinmas thereafter, and so forth half-yearly, termly, and continually during all the days of the life of the said B, with the interest, at the rate of £5 per centum per annum, of each term's payment of said annuity during the not-payment thereof; and with a fifth part more of each term's payment of liquidate penalty in case of failure: AND in like manner I BIND and OBLIGE myself and my foresaids, in the said event, to make payment to the said B, if she shall survive me, during all the days of her lifetime after my decease, of the sum of £                      sterling yearly, in lieu of a jointure house, and that likewise at the said two terms in the year, Martinmas and Whitsunday, by equal portions, commencing and to continue payable during her life, and with interest and penalty, all as before stipulated in relation to the annuity above provided [*here insert the provisions for mournings and aliment, and any other provisions intended to be granted to the wife; for the forms of which, as well as of any conditions intended to be imposed in the event of a second marriage, &c., see the preceding styles of this Title*]: AND, LASTLY, I BIND and OBLIGE myself and my foresaids, within                      months after the solemnisation of the said intended marriage, to execute, in the terms above specified, and to the satisfaction of the said E, the father of the said B, whom failing, of her eldest brother G, a full and effectual contract,

and all other deeds necessary for validly infefting and seising the said B in my lands and estate of R, lying within the county of T, in security of the said annuity of £                      and the other provisions before written, upliftable out of the said lands and estate: DECLARING [*here insert a declaration that the provisions are in full of the wife's legal claims, a clause for execution at the instance of third parties for the wife's behoof, and a clause of registration, all as in Form 1, supra, p. 654, et seq.*].

**2. Bond of Annuity to Wife for infefting her in an Annuity  
furth of the Husband's Estate.**

I, A (*designation*), being desirous of securing a suitable provision by way of annuity in favour of B (*name*), my wife, in case she shall survive me, do hereby PROVIDE and DISPONE to the said B, during all the days of her life after my decease, in case she shall survive me, a free liferent annuity or jointure of £                      sterling per annum, exempted from all burdens and deductions whatsoever (except income-tax), payable to her at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms which shall happen after my decease for the half-year following, and so forth half-yearly and termly thereafter in advance during the lifetime of my said wife, with a fifth part more of each term's payment of liquidate penalty in case of failure in the punctual payment of the said annuity, and interest of the said annuity at the rate of £5 per centum per annum from the respective terms of payment thereof during the not-payment, furth of ALL AND WHOLE (*here describe or validly refer to the lands and real burdens, conditions, &c., already constituted, if any*), or furth of any part or portion thereof, and readiest rents, profits, and duties of the same: AND FURTHER, without prejudice to the before-written provision for payment of the said annuity out of the lands and others foreshaid, which are to be primarily liable for the same, I BIND and OBLIGE myself, my heirs, and successors and representatives whomsoever *subsidiarie*, for payment of the said annuity to the said B at the foreshaid terms, and with interest and penalty as before-mentioned: AND I ASSIGN the writs to the effect of maintaining the right hereby granted: AND

(1) Narrative clause.

(2) Provision of annuity after husband's death.

(3) Obligation on husband's heirs *subsidiarie*.

Assignment of writs.

(4) Assigna-  
tion of  
rents.

I ASSIGN the rents in so far as necessary to satisfy the said annuity, as the same shall fall due: AND I RESERVE power to alter or revoke these presents at any time of my life: AND I DISPENSE with the delivery hereof during my life: AND I CONSENT to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

If the deed is granted in respect of there having been no previous contract of marriage, the narrative clause may proceed thus :—

Variation in  
narrative  
clause.

I, A (*designation*), CONSIDERING that no Contract of Marriage has been entered into between me and B (*full name*), my wife, and that I am desirous to secure an annuity or jointure to her after my death, in case she shall survive me: THEREFORE, &c. (*as before*).

And the following clause may be introduced immediately before the Assignment of Writs :—

Declaration  
that provi-  
sion in full  
of legal  
rights.

Which annuity or jointure of £            is hereby declared to be in full satisfaction to my said wife of all terce of lands, *jus relictæ*, and everything else which she could claim as my wife by or through my decease, in case she shall survive me; all which rights and claims the said B shall be held by acceptance hereof to have renounced and discharged.

Where deed  
not testa-  
mentary.

If the deed is not intended to be testamentary, the clauses reserving power of revocation and dispensing with delivery may be omitted, a clause of warrandice may be added, and the wife may be immediately infeft.

It may happen that the wife is entitled to receive, under the Aberdeen Act (5 Geo. IV. cap. 87), or powers contained in the Entail, a jointure out of the husband's entailed estate, and that the bond for payment of the annuity out of the fee-simple estate is intended only to make up the annuity to a larger amount than could be competently charged upon the entailed estate. In such a case the bond over the fee-simple estate may be granted in the above form for the whole amount of the intended annuity; and the following, or a similar clause, varied as may be necessary in the circumstances, may be inserted in the form of the bond of annuity given above, before the clause of Assignment of Writs, viz. :—

Annuity  
received by  
wife from  
entailed  
estate, to be  
imputed pro  
tanto of pro-  
vision.

AND WHEREAS, under the Entail Provisions Act, 1824, I have granted [*or am about to grant*] in favour of the said B a Bond of Annuity over my entailed estates of X, in the county of Y, for the whole amount with which I am entitled under the said Act to charge the said entailed estates in her favour, it is hereby PROVIDED and DECLARED that the sums which shall be receivable by her

in each year under the said Bond of Annuity, from the said entailed estates or the heirs of entail therein, shall be imputed *pro tanto* in or towards payment of the annuity or jointure of £           sterling, hereinbefore provided for her; and she shall be entitled under these presents only to an annuity of such an amount as, with what she shall receive in each year under the said Bond of Annuity, will make up to her an annuity of £           sterling, free of all burdens and deductions.

**3. Bond of Provision by Proprietor of Entailed Estate in favour of Wife, under the Entail Provisions Act, 1824.**

I, A (*designation*), institute (*or heir*) of entail in possession of the entailed lands and estate of X, situated in the parish of Y and county of Z, being desirous to provide by way of annuity out of the said estates in favour of B (*full name*), my wife, in case she shall survive me, and having resolved to exercise the powers conferred by the Entail Provisions Act, 1824, and subsequent Entail Statutes: Do hereby PROVIDE and DISPONE to the said B, in liferent during all the days of her life after my decease, in case she shall survive me, such a free liferent annuity or jointure as shall be equal to but shall not exceed one-third part of the free yearly rent of the entailed lands and estate hereinafter mentioned in so far as the same shall be let, and of the free yearly value thereof so far as the same shall not be let, after making the deductions specified in the first-mentioned Act of Parliament, all as the same may happen to be at my death; to be uplifted and taken the said annuity, free of all burdens and deductions, at two terms in the year, Whitsunday and Martinmas by equal portions, beginning the first term's payment thereof at the first of these terms which shall happen after my decease, for the half-year following, and so forth half-yearly and termly thereafter at the said terms, during the life of the said B, with a fifth part more of penalty for each term's failure in the punctual payment of said annuity, and interest of the said annuity at the rate of five pounds per centum per annum, so long as the same shall remain unpaid—furth of ALL AND WHOLE [*here describe or validly refer to the entailed lands and estate, and*

(1) Narrative clause.

(2) Provision of one-third of rents as annuity to wife on survivance.

(3) Assign-  
nation of  
writs and  
rents.

(4) Obliga-  
tion on  
heirs of  
entail for  
payment.

(5) Power of  
revocation  
and dispen-  
sation with  
delivery.

*real burdens, conditions, &c., already constituted, if any*], or furth of any part or portion thereof, and readiest rents, profits, and duties of the same: DECLARING ALWAYS that said annuity is provided by me, and shall be accepted by the said B under all the conditions, restrictions, and limitations applicable to such annuities which are contained in the said Entail Statutes; AND I ASSIGN the writs in so far as necessary to make effectual the right hereby granted; AND I ASSIGN the rents so far as necessary to satisfy the said annuity as the same shall fall due: AND I BIND and OBLIGE heirs of entail succeeding to me to make payment of the said annuity to the said B at the foresaid terms, and with interest and penalty as before-mentioned, but always with and under the conditions, restrictions, and limitations before referred to: AND I RESERVE power to revoke or alter these presents in whole or in part: AND I DISPENSE with the delivery hereof during my life: AND I CONSENT to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

**4. Bond of Annuity and Provision over Lands held in Trust to be Entailed, by the Person who would be Heir in Possession if the Entail were completed.**

By the Entail Amendment Act of 1868 (31 & 32 Vict. cap. 84, sec. 8), the provisions of the Aberdeen Act are made applicable to all entails and trusts for the purpose of entailing; and the powers of the Aberdeen Act may be exercised by the person who, if the lands had been entailed in terms of the trust, would have been the heir in possession. The following is the form of a Bond of Annuity and Provision by an heir-expectant in such a position. The provision made for wife and children by the bond may of course be made equally well in a Contract of Marriage:—

(1) Narra-  
tive clause.

I, A (*designation*), CONSIDERING that by Trust-Disposition and Settlement dated , and recorded , executed by the now deceased C (*designation*), my father, he, for the causes therein mentioned, disposed and conveyed to L, M, and N (*designations*), and to such other persons as might be assumed by them, or by the trustees for the time acting under the said Trust-Disposition and Settlement, and to the acceptors or acceptor, and survivors and survivor of them, ALL AND WHOLE the lands and estates therein

and hereinafter particularly described [or referred to], and also all other estates and effects, heritable and moveable, then belonging or which might thereafter belong to him, all as more particularly mentioned in the said Trust-Disposition and Settlement, but in trust only for the uses and purposes therein written, and in particular, that after the fulfilment of certain prior purposes therein set forth, the said trustees should execute an entail of the said estates, or of such part or parts thereof as should then remain vested in them, in favour of me, the said A, and the heirs-male of my body, whom failing, to the other heirs therein specified, as the said Trust-Disposition and Settlement containing provisions and arrangements for the payment of the debts then affecting the said estates and sundry other clauses and conditions, in itself more fully bears: AND FURTHER CONSIDERING that the said C died on the day of , and the said L, M, and N accepted of the trust created by the said Trust-Disposition and Settlement, and entered upon the possession and management of the said trust-estate, and that I was then and am now the person who, if said lands and estate had then been or were now entailed, would be the heir or institute of entail in possession thereof: AND WHEREAS, by the Entail Provisions Act, 1824 (commonly known and hereinafter referred to as the "Aberdeen Act"), it is, *inter alia*, enacted that it shall and may be lawful to every heir of entail in possession of an entailed estate in Scotland, under the limitations and conditions therein mentioned, to provide and infest his wife in a liferent provision out of his entailed lands and estates by way of annuity: AND FURTHER, that it shall and may be lawful to the heir of entail in possession of any entailed estate in Scotland under the limitations and conditions mentioned in said Act, to grant bonds of provision or obligations binding the succeeding heirs of entail in payment, out of the rents or proceeds of such estate, to the lawful child or children of the person granting such bonds or obligations who shall not succeed to such entailed estate, of such sum or sums of money, bearing interest from the granter's death, as to him or her shall seem fit: AND WHEREAS by "The Entail Amendment (Scotland) Act, 1868," it is, *inter alia*, enacted that from and after the passing of that Act, the said Aberdeen Act shall be applicable to all entails, and also to all trusts, under which land is held for the purpose of being entailed, or by which money, or other property, real or personal,

Narrative  
of Aberdeen  
Act.

Narrative  
of Entail  
Act, 1868.

is invested in trust for the purpose of purchasing land to be entailed, and that the powers conferred by the said Aberdeen Act may be exercised with reference to such land, money, or other property, by the person who, if such land had been entailed in terms of the trust, would be the heir in possession of the entailed land, and by the person who, if such money or other property had been invested in the purchase of land to be entailed, would be the heir in possession under the entail to be executed of such purchased land, if such entail had been executed: AND WHEREAS I, being the person who, if the entail of the said estates held by the trustees of my said deceased father had been executed, would be the heir or institute of entail in possession thereof, and thus entitled to grant such provisions in favour of my wife and children, as proprietors of entailed estates in Scotland are by the said Aberdeen Act authorised to grant to their wives and children, am desirous to avail myself of the powers thus competent to me in manner after-written: THEREFORE, in terms of the foresaid statutes and in the exercise of the powers thereby conferred upon me (*In the first place*), I DO hereby BIND and OBLIGE the heirs of entail who may succeed to me in the said estates to be entailed in pursuance of the directions contained in the said Trust-Disposition and Settlement, if an entail or entails thereof shall have been executed in my lifetime, to pay to B, my wife, if she shall survive me, during her lifetime after my death, a free liferent annuity or jointure of £                      sterling per annum, to be restricted in the event of her entering into a subsequent marriage to an annuity of £                      sterling, from and after the date of such subsequent marriage, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms which shall happen after my decease, for the half-year following, and the next term's payment at                      following for the half-year succeeding, and so forth thereafter in advance during the lifetime of my said wife, with a fifth part more of each term's payment of the said annuity of penalty in case of failure in punctual payment of the same, and interest of the said sum at the rate of £5 per centum per annum from the respective terms of payment thereof until paid: AND I hereby PROVIDE and DISPONE to my said wife, in the event of her surviving me, the said free liferent annuity of £                      sterling, restrictable as aforesaid, to be uplifted by her during all the days

(2) Obligation for payment of the jointure.

Restriction of jointure in event of widow's subsequent marriage.

(3) Charge of the jointure on the entailed lands.

of her life after my death, at the terms and with penalty and interest as before-mentioned, furth of ALL AND WHOLE [*here describe or validly refer to the lands already held, and real burdens, conditions, &c., affecting the same, if any*], or furth of any part or portion thereof, and readiest rents, profits, and duties of the same:

AND FURTHER, in case and in so far as the said direction contained in the said Trust-Disposition and Settlement shall not have been carried into effect at the time of my death, and the said estates or any part thereof, or any lands, money, or other property, real or personal, shall then remain vested in trust, and subject to the said directions for the settlement thereof under entail, or for the purpose of purchasing land to be entailed as aforesaid, I hereby PROVIDE and DECLARE that the said estates or part thereof, or lands, money, or other property then remaining vested in trust, shall be and the same are hereby charged and burdened with the payment to my said wife, in the event of her surviving me, out of the income or annual proceeds thereof, of the said liferent annuity of £ , restrictable as aforesaid, but only in so far as the said annuity shall not be recovered by my said wife out of the said estates if entailed in my lifetime, in pursuance of the directions before referred to, or out of such part of the said estates as shall have been so entailed in my lifetime, and to the effect of making up to her the full annuity of £ , restrictable as aforesaid, with penalty and interest as before-mentioned: AND, accordingly, I hereby DIRECT and APPOINT, and BIND and OBLIGE the said trustees, or other person or persons acting for the time in the execution of the trust created by the said Trust-Disposition and Settlement, and I also BIND and OBLIGE the person or persons who may be entitled for the time to the income or annual proceeds of the said trust-estates and money or other property, and also the institute and heirs of entail who may acquire right to the said lands and estates upon the directions before referred to being carried into effect in whole or in part by the execution of an entail or entails after my death, to pay to my said wife, in the event of her surviving me, the said liferent annuity of £ sterling, restrictable as aforesaid, with penalty and interest as aforesaid, and that to the extent and effect before mentioned,—my meaning and intention being to provide to my said wife an annuity or jointure of £ , restrictable as aforesaid, payable out of the said estates so far as entailed in my lifetime,

(4) Charge on the trust funds or lands if entail not executed.

(5) Obligation on the trustees and beneficiaries in the trust to pay annuity.

(6) Provisions to younger children.

Sliding scale of the provisions.

and out of the income or annual proceeds of the said estates so far as not entailed, and lands, money, and other property held, or that may be held, in trust by the said trustees and their successors in the said trust, or out of any part or portion of the said estates, or lands, money, or other property, or of the income or annual proceeds thereof, whether the said estates or other lands, or any part or parts thereof, shall be entailed or still held in trust at my death, or the said trust-money or other property shall or shall not have then been invested in land, and the land entailed in pursuance of the directions before referred to:—AND which life-rent annuity or provision to my said wife shall be subject to the whole conditions applicable thereto, and contained in the said statutes: AND particularly declaring that in case the said annuity shall be found to exceed the amount of the annuity which, in virtue of the statutes before mentioned, I am entitled to grant to my said wife out of the said estates, the same shall be subject to restriction to the extent of the excess, in the manner provided in the said Aberdeen Act: AND (*In the second place*) I hereby BIND and OBLIGE the heirs of entail succeeding to me in the said estates, to be entailed in pursuance of the directions contained in the said Trust-Disposition and Settlement, if an entail or entails in pursuance thereof shall have been executed during my lifetime, to make payment out of the rents and proceeds of the said estates to each of my children born or to be born, other than the heir entitled to succeed at my death to the said estates, and to the representatives of each such child predeceasing me who may be entitled to claim as representing such child, in virtue of any settlement to be made with my consent in any Contract to be executed in consideration of the marriage of such child, and to the lawful issue of each such child predeceasing me, claiming under the provisions of "The Entail Amendment (Scotland) Act, 1875," as extended by "The Entail Amendment (Scotland) Act, 1878," of such sum or provision as shall be equal to and shall not exceed the amount of the provision which in such a case I am entitled, under the statutes before referred to, to grant to my said children: THAT IS TO SAY, For one such child, a sum equal to and not exceeding one year's free rent or value of the said entailed estate, to be computed in the manner mentioned in the said Aberdeen Act; For two such children, a sum equal to and not exceeding two years' free rent or

value ; AND for three or more such children, a sum equal to and not exceeding three years' free rent or value, as the same shall be at the time of my death ; AND which sum or provision shall be payable upon the expiration of one year from my death, with interest thereof at the rate of 5 per centum per annum from and after the day of my death till paid : DECLARING ALWAYS that the said provision is granted by me under all the conditions applicable to such provisions which are contained in the said Aberdeen Act : AND FURTHER, in case and in so far as the said directions contained in the said Trust-Disposition and Settlement shall not have been carried into effect at the time of my death, and the said estates, or any parts thereof, or any lands, money, or other property, real or personal, shall then remain vested in trust, and subject to the said directions for the settlement thereof under entail, or for the purchase of land to be entailed, I hereby PROVIDE and DECLARE that the said estates or lands, money, or other property then remaining vested in trust, shall be, and the same are hereby, charged and burdened with the payment to my said children, or their representatives or issue entitled to claim as aforesaid, of a provision of such and the like amount and extent as I would have been entitled to grant to them out of the entailed lands and estates, if the lands so held in trust had been entailed, and any trust-money or other property held in trust had been invested in land and the land entailed, and that over and above the provision hereinbefore granted to my said children or their representatives or issue entitled to claim as aforesaid, out of any lands which may have been entailed in my lifetime, in pursuance of the directions before referred to : AND, accordingly, I hereby DIRECT and APPOINT and BIND and OBLIGE the said trustees and the person or persons who may be entitled for the time to the income of the said trust-estates and money and other property, and also the institute or heir of entail who may acquire right to the entailed lands and estate, upon the directions before referred to being carried into effect, in whole or in part, by the execution of an entail or entails after my death, to pay to said children, or their representatives or issue, entitled to claim as aforesaid, such a sum as shall be equal to and shall not exceed the provisions which I would have been entitled to grant in such a case out of the lands and estates, or rents thereof, if the lands so invested in trust had been entailed in my lifetime, or otherwise of the largest sum or

Charge on  
the lands  
or funds if  
no entail  
executed.

Obligation  
on trustees  
and bene-  
ficiaries to  
pay pro-  
visions.

Power to  
apportion  
children's  
provisions

Power of  
revocation.  
Dispensa-  
tion with  
delivery.  
Consent to  
registration.

provision with which I am, or shall be, entitled to charge the said trust-estates, money, and property, or the income or annual produce thereof, or for which I am entitled to bind the parties beneficially interested therein, as a provision for my said children or their representatives or issue, in terms of the statutes before referred to, and with and under the whole conditions applicable to such provisions, which are contained in the said statutes: AND I hereby PROVIDE and DECLARE that the provisions hereby made in favour of my said children, or their representatives or issue, entitled to claim as aforesaid, shall be divisible in case I shall leave more than one child other than the heir alive at my death, or who shall have left representatives entitled to claim as aforesaid, in such shares and proportions as I shall appoint by any writing under my hand, or, failing such appointment, then equally between or among them—the representatives or issue of any child entitled to claim as aforesaid being entitled to the share, both original and accruing, which would have fallen to such child if he or she had survived me: AND I RESERVE full power to alter or revoke these presents in whole or in part: AND I DISPENSE with the delivery hereof during my life: AND I CONSENT to registration for preservation and execution.—IN WITNESS WHEREOF, &c.

##### 5. Trust Conveyance by a Wife in Implement of a Marriage-Contract.

This will be in the ordinary form of a trust-deed, and will proceed on the following narrative:—

I, B, DAUGHTER of Y, with consent of the said Y, and with consent of A, CONSIDERING that by contract of marriage of even date with these presents [*narrate the contract shortly, referring to, but not reciting, the trust purposes*], THEREFORE, in implement of the said marriage-contract, I, the said B, do hereby ASSIGN, DISPONE, &c.

### 6. Renunciation by a Wife of a Liferent Annuity.

I, B, SPOUSE of A, CONSIDERING that by contract of marriage between the said A and me, bearing date , the said A BOUND and OBLIGED himself, and his heirs, executors, and successors whomsoever, without the necessity of discussing them in their order, to make payment to me, if I should survive him, during my lifetime after his decease, of a free yearly annuity of £200 sterling, payable at the terms and in the manner provided in the said contract of marriage: AND SEEING that I have agreed(a) to renounce and discharge the said annuity, THEREFORE I have RENOUNCED and DISCHARGED, as I do by these presents, for myself, my heirs, executors, and successors, RENOUNCE and DISCHARGE the said annuity of £200 sterling provided to me by the said contract of marriage, and interest and penalty thereon, and all claim competent to me therefor under the said contract, and I exoner and discharge my said husband and his foresaids thereof in all time coming, and of the said contract itself, in so far as it relates thereto: (b) AND I CONSENT to the registration hereof for preservation.—IN WITNESS WHEREOF, &c.

(1) Inductive clause.

(2) Renunciation of annuity.

(3) Declaration that discharge of legal claims in contract is null.

Deeds such as the above are not favourably regarded by the Court; and, especially when they affect or may affect the interests of children, they may be reducible.

### 7. Revocation by a Husband of a Donation stante matrimonio.

Donations *inter virum et uxorem* may be revoked by the donors at any time during their life, but not by their heirs. If a donor become insane, and a *curator bonis* be appointed to him, the curator may exercise the right of revocation. The creditors of a donor may revoke a donation even against his will, but the mere contraction of debt does not (as has sometimes been incorrectly stated) operate as an *ipso jure* revocation. A sequestration, however, under the Bankrupt Statute does so operate. An

(a) In order to prevent this renunciation from being afterwards revoked as a donation *inter virum et uxorem*, it must be for onerous causes, and the causes should be distinctly set forth here.

(b) A separate ratification by the wife should be procured, for the form of which see p. 70.

actual revocation by the creditors is necessary, but they may revoke after the donor's death.

The donation may be revoked by the donor after the death or bankruptcy of the donee. After divorce for adultery, the donee, if the offending party, loses the donation; and if the donor be the delinquent, the power of revocation ceases from the date of the offence.

(1) Narrative  
clause.

I, A, CONSIDERING that by contract of marriage between B and me, the said A, dated \_\_\_\_\_, I have sufficiently provided for her in case of my predecease, in manner therein mentioned; and that since the date of the said contract I have made an addition to the provision therein conceived in her favour, by assigning to her during her lifetime the rents, mails, and duties of the lands of X, which assignation is dated \_\_\_\_\_: AND that

(2) Revoca-  
tion of  
donation.

I have now resolved to revoke the said additional provision as unnecessary: THEREFORE I have REVOKED, as I do hereby REVOKE, all bonds, conveyances, and other securities made and granted by me in favour of the said B since the date of the foresaid contract of marriage, and particularly the assignation to the rents, mails, and duties of the lands of X above mentioned, with all that has followed or might follow thereon, all which I hereby declare to be void and null, and of no avail, force, or effect against me or my heirs or successors in time coming: AND I CONSENT to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

#### 8. Revocation by a Widow of a Deed granted to her Husband *stante matrimonio.*

(1) Narrative  
clause.

I, B, relict of A, CONSIDERING that by contract of marriage, dated \_\_\_\_\_, I was provided in a free annuity of £ \_\_\_\_\_ sterling, in manner therein specified, and that, during the life of my said husband, I was induced to renounce and discharge the said provision, to my great hurt and prejudice; AND seeing I am now resolved to take the benefit given by law to married persons of revoking all donations made by them *stante matrimonio*; THEREFORE I DO hereby DECLARE that the said renunciation was granted by me without good or onerous cause; AND, accordingly, in order that I may be restored and reponed thereagainst, I have REVOKED, as I do by these presents REVOKE and RECALL, the foresaid renunciation of my life-

(2) Revoca-  
tion of  
renuncia-  
tion of  
liferent.

rent provision of £ , contained in the contract of marriage above-mentioned; AND hereby DECLARE the said renunciation to be now and in all time coming null and void, with all that has followed or may follow thereon: AND I CONSENT to registration hereof for preservation.—IN WITNESS WHEREOF, &c.

A ratification will be proper when this deed is granted by a wife in the lifetime of her Husband.

### 9. Contract of Voluntary Separation.

IT is CONTRACTED and FINALLY ENDED between A, *on the one part*, and B, his wife, only daughter of the deceased E, *on the other part*, to the effect following: THAT IS TO SAY, the said parties having resolved on a separation in the following terms:—THEREFORE, on the one part, the said A hereby BINDS and OBLIGES himself to pay to the said B, for her separate maintenance and aliment, an annuity of £ sterling, at two terms in the year, Whitsunday and Martinmas, by equal portions, during their joint lives, and the said B continuing to live separately from her said husband; beginning the first term's payment at Whitsunday next for the half-year now current, and the next term's payment at the term of Martinmas next for the half-year preceding, and so forth half-yearly, termly, and continually thereafter during the joint lives of the said A and B, and their separation as said is, with a fifth part more of liquidate penalty for each term's failure in punctual payment of the said annuity, and the interest of each term's payment at the rate of £5 per centum per annum from the term of payment thereof during the not-payment: AND the said A hereby ENGAGES never to revoke, suspend, or delay payment of the said annuity to the said B upon any pretext whatever, and declares that her own receipts alone shall be sufficient discharges thereof from time to time: AND, on the other part, the said B hereby OBLIGES herself to withdraw, and continue withdrawn and absent, from the said A's family during their joint lives, until the parties shall think proper, of mutual consent, to change their present resolution, and again to live together as married persons: AND she hereby ACCEPTS of the said sum of £ sterling in full of all claim for separate aliment, board, clothes, or other necessities, and

(1) Inductive clause.

(2) Obligation by husband to pay annuity.

(3) Obligation by wife to withdraw from husband's family.

(4) Wife's  
obligation  
as to debts.

(5) Wife's  
consent to  
inhibition.

(6) Provi-  
sion for  
execution.

(7) Renun-  
ciation of  
action of  
adherence.

expenses of every description, which she can demand by law from the said A, as his wife, during their separation : (a) [AND she BINDS and OBLIGES herself not to contract or take on any debts or sums of money, upon any account or pretence, which can in any manner of way affect or burden the said A and his means and estate, or become the foundation of any legal demand against him] : AND the said B also CONSENTS that her said husband shall raise, execute, and record letters of inhibition against her if he shall think fit ; (b) AND it is hereby DECLARED that all execution necessary shall pass against the said A upon these presents, for payment of the annuity above-mentioned, at the instance of the eldest brother of the said B, whom failing, her nearest male blood relation who shall be major and within Great Britain for the time : AND LASTLY, each of the said parties hereby passes from and renounces any action of adherence or of aliment competent by law, at the instance of either of them against the other, and whole effect thereof : AND they CONSENT to registration hereof for preservation and execution.—IN WITNESS WHEREOF, &c.

## SECTION V

### COMPLETION OF TITLE UNDER MARRIAGE CONTRACTS

The completion of the titles of the parties to a marriage contract in whose favour heritable estate is conveyed, or securities constituted, may be effected by the registration of the contract itself in the appropriate Register of Sasines, with a warrant or warrants of registration in the

(a) When the contract is entered into with consent of a third party, who takes burden upon him for the wife, a clause to the following effect may be inserted in place of that within brackets [ ] :—[“And the said Y, as taking burden for the said B, BINDS and OBLIGES himself, and his heirs, executors, and successors, that she, the said B, shall not, during the separation, contract or take on any debts or sums of money, upon any pretence whatever, which shall any-ways affect and burden the said A, or his means and estate, or become the foundation of any legal demand against him, of all which the said Y hereby OBLIGES himself and his foresaids to RELIEVE the said A, and of all damages and expenses he may thereby incur.”] This clause is perhaps unnecessary, as the same result seems to flow *ex lege* from the mere act of separation.

(b) We have retained this clause as to letters of inhibition, as it is frequently inserted in contracts of voluntary separation ; but as the husband is entitled to use inhibition against his wife without the necessity of such a stipulation, the clause may be omitted if the parties choose. Besides, the notoriety of the separation renders it incompetent for the wife to bind the husband if he has given her an aliment.

usual form; or where it is not desired that all the purposes of the contract should be published, a feudal title may be completed, either (1) by the insertion of a clause of direction, and the registration of the parts of the deed so directed to be recorded, along with a warrant or warrants of registration referring to the clause of direction; or (2) by expediting a notarial instrument in the form of Schedule J of the Titles to Land Consolidation (Scotland) Act, 1868, and recording this instrument, with the necessary warrant or warrants, in the appropriate Register of Sasines.

The following is an example of a notarial instrument proceeding on a conveyance of lands contained in a Contract of Marriage.

At \_\_\_\_\_, there was on behalf of A (*designation*) presented to me, Notary Public subscribing, an antenuptial contract of marriage, dated \_\_\_\_\_ [*or if recorded, an extract of an antenuptial contract of marriage dated—here specify register and date of recording*], entered into between the said A, *on the one part*, and B (*designation*), *on the other part*; By which contract the said A, IN CONTEMPLATION OF the marriage thereby contracted between him and the said B, *inter alia*, disposed to and in favour of himself and the heirs-male of the marriage thereby contracted; whom failing, to the heirs-male of his body by any subsequent marriage; whom failing, to the heirs whomsoever of the marriage thereby contracted; whom failing, to the heirs whomsoever of the body of the said A by any subsequent marriage [*insert the further destination, if any*]; whom all failing, to the said A, his heirs and assignees whomsoever—the eldest heir-female always excluding heirs-portioners, and succeeding without division throughout the whole course of succession—heritably and irredeemably, but under the real and preferable burden always of the annuity provided in said contract to the said B, ALL AND WHOLE the lands and estate of X [*here describe or validly refer to the lands conveyed, and real burdens, conditions, &c., already constituted, if any, all as described or referred to in the contract*], together with all the said A's right, title, and interest, present and future, therein: DECLARING ALWAYS that, notwithstanding the destination before written, &c. [*here narrate any provisions as to alteration of the succession, and reserved power to execute an entail*]: WITH ENTRY as at [*insert date specified in the contract*]: WHEREUPON this instrument is taken in the hands of K [*insert name and designation of Notary*] in the terms of "The Titles to Consolidation (Scotland) Act, 1868."  
—IN WITNESS WHEREOF, &c.

It may be observed that where the lands settled by the husband are conveyed under real burden of the wife's jointure, the Notarial Instrument in his favour must specify the real burden, and the completion of his title in this form, or by registration of the contract itself in the Register of Sasines, will constitute a real security for the jointure without the necessity, in the first case, of a separate Notarial Instrument being expedite in her favour; or, in the second case, of any warrant of registration on her behalf being written on the contract. In the usual case, however, the wife's security will be completed by registration of the contract, with warrant on her behalf, or by registration of a separate Notarial Instrument. The same remark applies where a completed security is given to trustees for the provisions in favour of children. For the mode and form of completing such security titles, the title relating to heritable securities is referred to.



